

July 3, 2013

**VIA FEDERAL EXPRESS**

Director, Superfund Division  
U.S. EPA, Region V  
77 West Jackson Boulevard  
Mail Code S-6J  
Chicago, Illinois 60604

***Re: NOTICE OF DEMAND FOR DISPUTE RESOLUTION  
AND  
STATEMENT OF POSITION***

***United Scrap Lead Site, Troy, Ohio  
Site No. 05H5***

Dear Director, Superfund Division:

Pursuant to Section XXI of the Consent Decree entered on September 28, 1998 in *United States v. Atlas Lederer Co., et al.*, United States District Court for the Southern District of Ohio, Case No. C3-91-309, the Settling Generator Defendants hereby demand formal dispute resolution for the oversight costs billed to the Settling Generator Defendants for August 3, 2011, September 27, 2011 and June 27, 2012. This proceeding is governed by Paragraph 75 of the Consent Decree. The agreed period for informal dispute resolution, pursuant to paragraph 72 of the Consent Decree, expired on June 30, 2013.

**I. INTRODUCTION**

Pursuant to the Consent Decree entered by the Court in this matter on September 28, 1998, the Settling Generator Defendants (also known as the "United Scrap Lead Respondent Group" or "Respondent Group") agreed to perform the Remedy for the United Scrap Lead Site, Troy, Ohio (the "USL Site") pursuant to an Amended Record of Decision ("Amended ROD"), dated June 27, 1997. The Respondent Group completed construction of the Remedial Action in November, 1999. A Certification of Completion of the Remedial Action, pursuant to Paragraph 60 of the Consent Decree, was issued by the Director, Superfund Division, Region V, U.S. EPA on June 4, 2001 (the "RA Certification"). As set forth in this RA Certification "U.S. EPA certifies that the Remedial Action has been performed in accordance with the RD/RA Consent

{01325410 -2}

Decree and that those Performance Standards relating to the Remedial Action have been achieved.” The RA Certification also confirmed that no on-going operation and maintenance (“O&M”) was required at the USL Site.

The instant demand for Dispute Resolution concerns the oversight costs billed to the Settling Generator Defendants for August 3, 2011, September 27, 2011 and June 27, 2012 (the “2011/2012 Billing”). Each bill is merely a listing of an employee name, fiscal year, pay period, payroll hours and payroll costs. There is no indication what type of work any of these employees performed. In light of the fact that the RA is finished and no O&M or operation is ongoing, it is highly unusual that the Agency has any actual work to perform for the Site. After each invoice, Settling Generator Defendants sent a Notice of Dispute and requested an explanation for the costs from Sherry L. Estes, Associate Regional Counsel of each of the time entries contained in the Oversight Invoice for each of the employees named.<sup>1</sup> On October 1, 2012, Ms. Estes responded “such documentation is not required.” Ms. Estes also attached barebones tables and information, a copy of which is attached hereto as Exhibit 1. The information only confirmed the Settling Generator Defendants’ suspicions because it showed that the original bills sought reimbursement for improper charges.

It is the position of the Settling Generator Defendants that the oversight costs in the 2011/2012 Billings are arbitrary, capricious and inconsistent with the National Contingency Plan (“NCP”).

## II. STATEMENT OF POSITION

Between 2010 and 2012 -- and nearly 16 years after completion of the RA -- the Agency has incurred over 100 hours of alleged oversight activities “for the United Scrap Lead site”. The entirety of the “oversight” costs charged to the Respondent Group in the 2011/2012 Billings has nothing to do with the Remedial Action constructed by the Respondent Group in 1999 and certified as complete by U.S. EPA as of June 4, 2001. In fact, it is wholly unclear why these “oversight” costs were incurred. In fact, despite repeated demand for an explanation of the costs incurred, the Agency has refused to provide even the most basic information on what type of work its employees performed. This is in direct conflict with the requirements of the NCP in CERCLA §104(i). These costs being incurred by the Agency and charged to the Respondent Group are arbitrary and capricious and inconsistent with the NCP.

Despite on-time completion of the Remedial Action and achievement of the Performance Standards mandated by the Amended ROD and in full compliance with the Consent Decree, the

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<sup>1</sup> Settling Generator Defendants sent a Notice of Dispute on September 2, 2011, September 29, 2011 and July 3, 2012.

“account” of the Settling Generator Defendants has become a convenient dumping ground for time allegedly incurred by Region 5 personnel. The scant information Ms. Estes provided has confirmed that improper charges are being invoiced to the Settling Generator Defendants. For example, her October 1, 2012 letter concedes that some of the time for Fiscal Year 2010 related to a litigation task which is not the responsibility of the Settling Generator Defendants. In addition, U.S. EPA is seeking reimbursement for costs for review of groundwater monitoring data in 2011 by a contractor to the General Service Administration (“GSA”) when such monitoring at the USL Site ceased in 1999. These errors confirm that the Settling Generator Defendants have valid reason to challenge the invoices and requesting detailed information about the Agency’s sloppy, if not fraudulent, billing practices.

While the Settling Generator Defendants agreed to pay the Agency’s “Future Response Costs”, as defined in Paragraph 4.e. of the Consent Decree, there was no agreement to underwrite duplicative, unsupported or erroneous charges by the Agency. The Consent Decree does not permit and the NCP does not allow the Agency to bill the Settling Generator Defendants without providing any support for its costs. Moreover, in light of egregious errors in its billing practices, the Agency must provide detailed billing for a Site which for all purposes no longer requires the Agency’s oversight. Therefore, the costs billed to the Settling Generator Defendants are arbitrary and capricious, hence inconsistent with the NCP and not recoverable under the Consent Decree.

The Settling Generator Defendants recognize that the Agency’s response costs incurred in supervising both removal and remedial actions may be recoverable under Section 107 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9607(a)(4)(A). However, the Agency’s recovery of oversight costs is specifically limited by the provisions of the NCP. See 40 C.F.R. §300.3(b)(4) (“Procedures for undertaking response actions pursuant to CERCLA”). The NCP sets forth, *inter alia*, “methods and criteria for determining the appropriate extent of removal, remedy, and other measures”, 42 U.S.C. §9605(a)(3) and “means of assuring that remedial action measures are cost effective”, 42 U.S.C. §9605(a)(7). The NCP also requires documentation of all costs that are to be recovered. See 40 C.F.R. §300.160(a)(1) and §300.430(f)(5) (“To support the selection of a remedial action, all facts, analysis of facts, and site-specific policy determinations considered in the course of carrying out activities in this section shall be documented, as appropriate, in a record of decision . . .”). CERCLA itself limits the recovery of response costs, including oversight costs, to those that are “necessary” and “not inconsistent with the national contingency plan”. See 42 U.S.C. §9607(a)(4)(A) and (B). Where the Agency’s costs are inconsistent with the NCP, they should not be allowed. *E.g. United States v. USX Corp.*, 68 F.3d 811, 817 (3<sup>rd</sup> Cir. 1995). Accordingly, the requirement that responsible parties pay only those costs that are not inconsistent with the NCP limits EPA’s discretion in recovering oversight costs. See, *United States v. EI Dupont v. Nemours & Company, Inc.*, 432 F.3d 161 (3<sup>rd</sup> Cir. 2005). The arbitrary and capricious standard

is the proper measure of review for EPA's actions in incurring response costs, including oversight costs. *United States v. Northeast Pharmaceutical & Chemical Co.*, 810 F.2d 726, 747-48 (8<sup>th</sup> Cir. 1986). See also *United States v. Azko Coatings of America, Inc.*, 949 F.2d 1409, 1424 (6<sup>th</sup> Cir. 1991).

It is the Settling Generator Defendants' position that the costs incurred by the Agency during the relevant time periods, August 3, 2011, September 27, 2011 and June 27, 2012, were unnecessary and excessive in light of the NCP and, therefore, would be disallowed as arbitrary and capricious. See *Kalman v. W.P. Abrams Metals, Inc.*, 155 F.3d 1019, 1025 (8<sup>th</sup> Cir. 1998). In an effort to determine what work was performed by the Agency, the Respondent Group, through its Steering Committee Chairman, requested an explanation and documentation of the costs that were billed. A summary of some of those costs were provided in the October 1, 2012 correspondence of Ms. Estes, the Associate Regional Counsel assigned to this Site. See Exhibit 1. Although requested, no documentation was provided to explain the costs incurred for each of the bill's designated employees and pay periods. Ms. Estes' position is that the Agency can bill any costs it chooses to the Settling Generator Defendants and refuse to provide supporting information to back up the bills.

From the Ms. Estes' summary, it is apparent that the Agency billed the Settling Generator Defendants for the United Scrap Lead Site without providing any explanation what type of work was conducted by the Agency. In her October 1, 2012 letter, Ms. Estes indicates, in response to a request for more detailed information, that "such documentation is not required by the Consent Decree" and that "[e]ach oversight bill which EPA has sent to the Settling Generator Defendants has met the standards of the Consent Decree." Yet, in the same letter, she concedes that she has erroneously billed the Settling Generator Defendants for litigation costs. Clearly, the Agency's costs billed to the Settling Generator Defendants are arbitrary and capricious, hence inconsistent with the NCP and not recoverable under the Consent Decree.

As to the reimbursement sought for costs claimed by the GSA contractor (e.g., Booz Allen Hamilton), U.S. EPA authorized the Settling Generator Defendants to stop groundwater monitoring at the USL Site and cap the monitoring wells in 1999. See *First Five Year Review* at p. 8 (September 2001). Despite the fact that groundwater monitoring has ceased at the USL Site, the GSA consultant, Booz Allen Hamilton, is seeking reimbursement for "processing incoming groundwater monitoring data." See, the 1/18/11 email from Earlene Rhodes (Attachment A to October 1, 2012 letter). Clearly, no groundwater monitoring data from the USL Site is incoming and any such costs are being incorrectly charged to U.S. EPA and, in turn, to the Settling Generator Defendants.

Section 300.160 of the Code of Federal Regulations provides that "the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the

basis for cost recovery.” 40 C.F.R. § 300.160. The section further provides that “documentation shall be sufficient to provide accurate accounting of federal ... costs incurred for response actions[.]” *Id.* No court has ever held that U.S. EPA may bill responsible parties at Superfund sites without providing appropriate documentation in support of its bills. On the contrary, courts have held that U.S. EPA has an evidentiary burden when it seeks to recover costs. *U.S. v. W.R. Grace & Co.-Conn.*, 280 F.Supp.2d 1149, 1180 (D. Mont. 2003)(“In the absence of regulatory guidance on the meaning of ‘accurate accounting,’ courts have applied civil evidentiary standards to assess the adequacy of cost documentation supporting a CERCLA cost recovery claim”). Furthermore, no court would permit U.S. EPA to recover costs without descriptive documentation because U.S. EPA would then have unchecked ability to bill responsible parties who would lack the ability to verify the charges.

In fact, when faced with challenges to U.S. EPA’s costs, courts have consistently reviewed the documentation submitted by U.S. EPA for sufficiency, and permitted recovery only when costs were properly documented and denied recovery for duplicative, unsupported, or erroneous costs. *See U.S. v. Findett Corp.*, 75 F.Supp. 2d 982, 993 (E.D. Mo. 1999) (“itemized cost summary reports of its payroll costs ... list the employee who traveled, the travel voucher number, the cost of the travel, and the Treasury schedule confirming payment of that cost”); *U.S. v. Gurley*, 317 F.Supp. 2d 870, 879 (E.D. Ark. 2004)(“The United States supported its costs by a variety of documents including time sheets, travel vouchers, contract invoices, interagency agreement bills and cooperative agreement payment requests.”); *U.S. v. Chapman*, 146 F.3d 1166, 1171 (9th Cir. 1998) (“kept extensive records of recovery costs in the form of timesheets, cost estimates, and accountant and attorney declarations”); *U.S. v. Chromalloy American Corp.*, 158 F.3d 345, 352 (5th Cir.1998) (“detailed cost summaries of its oversight expenses”).

Despite completion of the Remedial Action and achievement of the Performance Standards specified in the Amended ROD, Agency personnel continue to bill the Settling Generator Defendants without complying with the procedure and criteria contained in the NCP. All the costs are unnecessary, excessive and inconsistent with the criteria and procedures under the NCP. Charges that are not documented are, per se, inconsistent with the NCP. 40 C.F.R. §300.160(a)(1). *See U.S. v. E.I. DuPont DeNemours and Company, Inc.*, *supra*. Therefore, these costs should be disallowed under the arbitrary and capricious standard.

III. The Settling Generator Defendants Have Discharged Their Responsibilities for Legitimate Future Response Costs Under The Consent Decree

In good faith, the Settling Generator Defendants entered into the Consent Decree understanding that prompt performance of the Remedial Action and achievement of the Performance Standards would eliminate the human health and environmental risks associated

Director, Superfund Division  
July 3, 2013  
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with this Site. The Settling Generator Defendants met their obligations in a timely and appropriate fashion. The Settling Generator Defendants understood that the Agency's oversight of the remedial action would be reimbursed as a "Future Response Cost". However, the Settling Generator Defendants never agreed to reimburse the Agency for costs arbitrarily incurred without compliance with the NCP.

The excessive, unnecessary oversight costs that have been billed during the relevant time period are inconsistent with the mandates of the NCP. These costs are unrelated to choosing a particular response action or overseeing the implementation of the remedy. Rather, the Agency has acted arbitrarily and capriciously in spending seven years and hundreds of hours of time attempting to develop a "model" environmental covenant or draft institutional controls which were the responsibility of the Settling Owner/Operator Defendants or to prepare "informal" risk assessments which do not follow the requirements of the NCP. The costs that are now being charged to the Settling Generator Defendants are unnecessary and excessive in light of the NCP and should be disallowed under the arbitrary and capricious standard.

Respectfully submitted,



Michael A. Cyphert  
Steering Committee Chairman  
United Scrap Lead Respondent Group

MAC:lak

cc: Chief, Environmental Enforcement Section, U.S. Department of Justice  
Chief, Environmental Defense Section, U.S. Department of Justice  
Ms. Lolita Hill, U.S. EPA Remedial Project Manager, Region 5  
Sherry L. Estes, Associate Regional Counsel, Region 5  
United Scrap Lead Respondent Group - Steering Committee Members





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

October 1, 2012

REPLY TO THE ATTENTION OF:

Michael Cyphert  
Walter & Haverfield, LLP  
1301 East 9th Street  
Suite 3500  
Cleveland, OH 44114-1821

Re: Notices of Dispute Dated September 2 and September 29, 2011  
and July 3, 2012  
United Scrap Lead Site; Troy, Ohio

Dear Mike:

The purpose of this letter, subject of course to your agreement, is to extend, from September 30 until December 31, 2012, the informal dispute resolution of EPA's oversight bills dated August 3, 2011, September 27, 2011 and June 27, 2012 with regard to the United Scrap Lead Site (Site) in Troy, Ohio. On behalf of the Settling Generator Defendants under the Dispute Resolution provisions of the September 28, 1988 Consent Decree (Consent Decree), you had sent Notices of Dispute with regard to these bills dated September 2 and September 29, 2011, and July 3, 2012. On June 29, 2012, we agreed to extend the informal dispute resolution until September 30, 2012.

I also hope, with this letter, to provide you with some of the information that you have requested in your various notices of disputes and in our other communications with regard to these oversight bills, as well as to provide a response to some of the matters raised in your Notice of Dispute of July 3, 2012.

One of your requests in the July 3, 2012 letter on behalf of the Settling Generator Defendants is a Certification of Completion of the Work as provided by Section XVII, Paragraph 61 of the Consent Decree. That response will be addressed to you soon from my Superfund program client. Your invocation of Dispute Resolution as to this matter cannot be effective until you have received a negative response as to this request.

Another request set forth in your July 3, 2012 letter is the deletion of the Site from the National Priorities List (NPL). The Site is scheduled to be deleted from the NPL in 2015. I will not consider your purported invocation of Dispute Resolution set forth in the July 3<sup>rd</sup> letter to be automatic. If your group considers this timetable too remote, it will need to invoke Dispute Resolution according to the Consent Decree provisions.

Exhibit 1

REC'D OCT 4 2012

Michael A. Cyphert  
Walter & Haverford  
September 28, 2012  
Page - 2 -

Your July 3, 2012 letter also requests "a specific explanation of each of the time entries contained in the Oversight Invoice for each of the employees named." I understand that this request is probably retroactive to the prior oversight bills, as I have not provided the Settling Generator Defendants with their requested documentation for these bills.

Please be advised that I will not be able to accede to this final request. In the first place, such documentation is not required by the Consent Decree, which requires only that the United States send a bill "that includes a cost summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors. . ." Each oversight bill which EPA has sent to the Settling Generator Defendants has met the standards of the Consent Decree; EPA will attempt to provide more explanation of the types of tasks accomplished by each employee in an attempt to resolve our dispute. However, EPA employees do not log each specific task in which they are engaged during any particular day. Even if this particular information were available and could be retrieved, I doubt whether it would be worth the cost to Settling Generator Defendants to obtain it. If EPA employees were to go back to their calendars, or e-mail or other records systems to try to determine the specific tasks they were working on for the United Scrap Lead site, they would be entitled to charge the time involved in that record search to the Site. Many of the time entries charged are for less than one hour of time. It could actually take the employee more time to try to verify the specific task than it took to do the task in the first instance. Even though federal salaries have been frozen in recent years, some employees will have received step increases, making their pay rate higher now than at the time the charges were originally incurred.

Thus, because the request is beyond the scope of the Consent Decree, and because the documentation is unlikely to exist, or, to the extent it does exist, its retrieval will be very labor- and cost-intensive, which would put even more costs in dispute between the Settling Generator Defendants and EPA, I regret that I will not be able to provide you with the requested information. I will, however, provide you with information regarding the tasks that each EPA employee is involved in at United Scrap Lead; to the extent that you have specific concerns regarding the specific charging by an individual, we may be able to provide you with more detail regarding the tasks engaged in by that individual. The available information, beginning with the bill from March 1, 2009 through February 28, 2010, is set forth in the following tables.



Michael A. Cyphert  
Walter & Haverford  
September 28, 2012  
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**Contract Costs from March 1, 2010 through February 28, 2011**

<u>Name of Contract</u>	<u>Contract or IAG Number</u>	<u>Site Amount</u>
General Services Administration	DW47948119	\$101.76
ASRC Management Services, Inc.	EPW05052	\$112.39

With regard to the Inter-agency Agreement (IAG) with the General Services Administration, the latter agency manages a contract with Booz Allen Hamilton (BAH). Attached to this letter is a January 11, 2011 electronic message between myself and Earlene Rhodes, the project officer assigned to this IAG, which discusses the tasks which BAH performed that were related to the United Scrap Lead site. (Attach. A).

ASRC Management Services manages the Superfund Record Center for EPA; Lorraine Kos is the EPA project manager for this contract. Originally, on a draft billing, there were 4 ASRC vouchers which were charged to the oversight bill, vouchers #31-33 and #41. I sent a message to Ms. Kos asking what activities the ASRC personnel spent time on and for whom the time was spent. Attached to this letter is an e-mail exchange which occurred between Ms. Kos and myself regarding the ASRC activities. Based upon the information which she sent me, since two of the document pulls apparently were for me, and I was more likely to want documents related to my cost recovery litigation responsibilities, I had these two vouchers removed from the draft billing. I instructed my accountant to retain the two vouchers where documents were requested by the RPM in the oversight billing. (Attach. B).

The chart on page three, along with the above explanation, details all of the costs set forth in the billing for the period of March 1, 2009 through February 28, 2010, with the exception of the EPA indirect costs, which are an exact function of the direct costs which are charged. I will now turn my attention to the 2010-2011 oversight billing.

**Contract Costs from March 1, 2009 through February 28, 2010**

<u>Name of Contract</u>	<u>Contract or IAG Number</u>	<u>Site Amount</u>
Superfund Cooperative Agreement	V98568704	\$526.85
ASRC Management Services, Inc.	EPW05052	\$1384.68

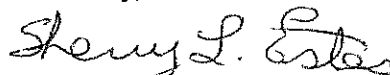
The background information for the Superfund Cooperative Agreement (SCA) with Ohio EPA # V98568704, Attachment C, sets forth substantial information. The first page of the spreadsheet information shows the various draw amounts that Ohio EPA made for the United Scrap Lead site. The second pages shows detailed financial data, while the third page show that an Ohio EPA inspector went to the Site, conducted an annual inspection, completed an inspection report for EPA, and took photos, and sent these documents to the Agency.

With regard to ASRC Management Services, which as discussed previously in this letter manages the Superfund Record Center for EPA, I only requested that ASRC seek information with regard to invoice #44, which represented charges of \$1100.33 out of the total of \$1384.68 charged to the Site. I made the judgment that the contractor's and the EPA's project officer's time in seeking out additional detail for vouchers #42, 46, 51 and 54 would not be worth the relative low costs of these vouchers. If the Settling Generator Defendants would be prepared to guarantee the time of the EPA and contractor personnel in providing more detail, EPA would be happy to make more detail available to them.

I hope that you find the explanation included in this letter and the information enclosed herein to be helpful. I did not have the time to detail the charges involved in the 2012 billing, but wanted to send you the information that I have been able to collect. I hope with this information that we can resolve the disputes relative to the 2009-2010 and the 2010-2011 oversight bills.

Please do not hesitate to contact me at (312) 886-7164 if you have further questions about this letter or the underlying oversight bills.

Sincerely,

  
Sherry L. Estes  
Associate Regional Counsel

Encl.

cc: S. Barnes, MF-1  
D. Bruce, S-6J  
L. Hill, S-6J  
J. Warren, DOJ

Attachment A



**Fw: United Scrap Lead Invoice**  
**Earlene Rhodes** to: Sherry Estes  
Cc: DAVID WILSON

01/18/2011 12:12 PM

From: Earlene Rhodes/R5/USEPA/US  
To: Sherry Estes/R5/USEPA/US@EPA  
Cc: DAVID WILSON/R5/USEPA/US@EPA

History: This message has been replied to.

Hello Sherry,

Per our conversation, following is a description of work done by the EPA contractor, Booz Allen Hamilton (BAH) and will explain the charges at the United Scrap Lead site:

BAH is primarily responsible for processing incoming groundwater monitoring data. As data providers submit site-specific environmental data to EPA Region 5, BAH imports the files to the EQulS databases where the data can be accessed by EPA RPMs and GEOS (an internal EPA Region 5 Superfund analysis team) for analysis.

The Electronic Data Deliverables (EDDs) are comprised of distinct sets of files which are checked for validity and then processed into a complex database. As BAH processes this data, the EQulS software uncovers errors in the files that must be corrected before the data can be officially submitted. BAH ensures the validity and accuracy of complex data tables submitted to EPA Region 5.

I hope this explanation helps. Also, if you have further questions you may wish to contact David Wilson, who oversees the GEOS work. Thank you.

Sherry Estes  
EPAMAILR522/USEPA/US

**Inbox (6712)**  
 Drafts  
 Sent  
 Follow Up  
 All Documents  
 Junk  
 Trash  
 My Records  
 Views

**Folders**  
 Accra Pac  
 Air Case (438)  
 Air Detail (201)  
 Amoco (34)  
 Am. Wire  
 Arbor III  
 B&B Metals  
 Calderon  
 Caledonia (38)  
 Celina  
 CERCLA Settlement  
 Chgo Enforce (178)  
 Chgo Gen. (1)  
 Chgo W. Side  
 Chgo. Altgeld  
 CLE  
 Clermont Co. (1)  
 Contracts (73)  
 Coshocton (21)  
 Daimler Chrysler  
 Dawn (137)  
 Detroit Edison Disc  
 Dow Corning (68)  
 ECMS  
 EMD Chem (76)  
 Estes (617)

Re: ASRC ...

New Reply Reply To All Forward Show Me

**Re: ASRC Contractor Activities for the United Scrap Lead, OH, Site**

From: **Lorraine Kos/R5/USEPA/US** Monday, January 24, 2011 09:40  
 To: Sherry Estes/R5/USEPA/US@EPA  
 Sent by: LORRAINE KOS/R5/USEPA/US

Sherry,

Here is additional information per your request:

Voucher # 31 - ORC request on April 21, 2009

Voucher #32 - RPM request on May 12, 2009 and ORC request on May 28, 2009

Voucher #33 - RPM request (date filled unknown, but verified by employee who completed request it was done for RPM)

Voucher #41 - ORC requests on January 4, January 5, and January 7, 2010.

Thanks.

Lorraine D. Kos, Task Order Manager  
 ASRCMS Contractor  
 77 W. Jackson Blvd., #SRC-7J  
 Chicago, IL 60604  
 Phone: (312) 886-0911  
 Fax: (312) 697-2588  
 Email: kos.lorraine@epamail.epa.gov

Sherry Estes--01/21/2011 09:10:10 AM--Lorraine, who were your contractors retrieving documents for? Was it for the FOIA staff, RPMs, or w

Sherry Estes/R5/USEPA/US

From: LORRAINE KOS/R5/USEPA/US@EPA  
 To: 01/21/11 09:10 AM  
 Date: Re: ASRC Contractor Activities for the United Scrap Lead, OH, Site  
 Subject:



Full | Preferences | Online | Logout | Help

Mail: United ... x | Will Mike bl... x | Fw: ASRC ... x

Sherry Estes  
EPAMAILR522/USEPA/US

Inbox (6712)  
Drafts  
Sent  
Follow Up  
All Documents  
Junk  
Trash  
My Records

Views

Folders

- Accra Pac
- Air Case (438)
- Air Detail (201)
- Amoco (34)
- Am. Wire
- Arbor III
- B&B Metals
- Calderon
- Caledonia (38)
- Celina
- CERCLA Settlement
- Chgo Enforce (178)
- Chgo Gen. (1)
- Chgo W. Side
- Chgo. Altgeld
- CLE
- Clermont Co. (1)
- Contracts (73)
- Coshocton (21)
- Daimler Chrysler
- Dawn (137)
- Detroit Edison Disc.
- Dow Corning (68)
- ECMS
- EMD Chem (76)
- Estes (617)

New | Reply | Reply To All | Forward | Show More

**Fw: ASRC Contractor Activities for the United Scrap Lead, OH, Site**

Sherry Estes

To: Sheila Barnes

Sheila, as you see, Lorraine is looking for some info for me, which will determine whether I can charge the ASRC charges to the O.S. billing for USL. As for Coshocton, this bill is not due yet, I should have it to you by its due date, 1/27.

----- Forwarded by Sherry Estes/R5/USEPA/US on 01/24/2011 08:37 AM -----

From: Lorraine Kos/R5/USEPA/US

To: Sherry Estes/R5/USEPA/US@EPA

Date: 01/24/2011 07:49 AM

Re: ASRC Contractor Activities for the United Scrap

Subject: Lead, OH, Site

I have someone searching for and checking the actual requests to determine whether they were for FOIA requests, RPMs, etc. I should have the information for you no later than this afternoon.

Please keep in mind the amount of time spent of this additional search will also be billed to the site.

Thanks.

Lorraine D. Kos, Task Order Manager  
ASRCMS Contractor  
77 W. Jackson Blvd., #SRC-7J  
Chicago, IL 60604  
Phone: (312) 886-0911  
Fax: (312) 697-2588  
Email: kos.lorraine@epamail.epa.gov

Sherry Estes---01/21/2011 09:10:10 AM---Lorraine, who were your contractors retrieving documents for? Was it for the FOIA staff, RPMs, or w

From: Sherry Estes/R5/USEPA/US

LORRAINE KOS/R5/USEPA/US@EPA

# Attachment C

## Draw Amounts for United Scrap Lead, Troy, Ohio

Sum of Journal Amount Posted Date	Total	Drawdown Date	Federal Indirect	Total
7/29/2010	176.98	8/4/2010	\$ 27.73	\$ 204.71
8/11/2010	176.79	10/7/2010	\$ 27.70	\$ 204.49
8/27/2010	60.59		\$ 9.49	\$ 70.08
10/1/2010	47.56	9/1/2010	\$ -	\$ 47.56
Grand Total	461.92			



CORE_PEI CORE_PEI AGENCY_I ALI_CODE ALI_DESC		COMBO_C DEPARTM DEPARTM FUND_CO GRANT_C			
Nordstrom Juanita	EPAUSLD	715632	Fed Supprtd Cleanup & Response	809144	EPA80150C SW-DERR 3F30 EPAFER22
Nordstrom Juanita	EPAUSLD	715632	Fed Supprtd Cleanup & Response	809144	EPA80150C SW-DERR 3F30 EPAFER22
Nordstrom Juanita	EPAUSLD	715632	Fed Supprtd Cleanup & Response	809144	EPA80150C SW-DERR 3F30 EPAFER22
Nordstrom Juanita	EPAUSLD	715632	Fed Supprtd Cleanup & Response	809144	EPA80150C SW-DERR 3F30 EPAFER22
Nordstrom Juanita	EPAUSLD	715632	Fed Supprtd Cleanup & Response	809144	EPA80150C SW-DERR 3F30 EPAFER22

NOTES	HOURS
prepare for/travel to-from USL site to perform site inspection, notes, photos for annual status report to USEPA.	4.5
completed edits, photo labels, photo selection, and emailed/snail mail USL site inspection report with photos to RPM	2
completed edits, photo labels, photo selection, and emailed/snail mail USL site inspection report with photos to RPM	0.5
completed edits, photo labels, photo selection, and emailed/snail mail USL site inspection report with photos to RPM	2
organizing, printing site inspection report photos for SWDO/DERR files.	1.5



# Attachment C (Financial data)

Fund Code	ALI	Fiscal Year	Accounting Period	Job	Grant ID	Agency Use	ISTV Xref
3F30	715632	2011	1		EPAFER22	EPAUSLD	OBM
3F30	715632	2011	1		EPAFER22	EPAUSLD	DOH
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	1		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	OBM
3F30	715632	2011	2		EPAFER22	EPAUSLD	DOH
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	OBM
3F30	715632	2011	2		EPAFER22	EPAUSLD	DOH
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	DASA
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-
3F30	715632	2011	2		EPAFER22	EPAUSLD	-



**Journal Amount**

\$	0.50
\$	0.04
\$	0.74
\$	0.30
\$	0.02
\$	0.11
\$	0.65
\$	0.13
\$	2.69
\$	1.29
\$	0.01
\$	1.88
\$	9.54
\$	0.23
\$	18.85
\$	140.00
\$	0.50
\$	0.04
\$	0.74
\$	0.30
\$	0.02
\$	0.11
\$	0.65
\$	0.13
\$	2.70
\$	1.28
\$	0.02
\$	1.93
\$	9.29
\$	0.23
\$	18.85
\$	140.00
\$	0.17
\$	0.01
\$	0.25
\$	0.10
\$	0.01
\$	0.04
\$	0.22
\$	0.04
\$	0.90
\$	0.43
\$	0.36
\$	0.63
\$	1.31

ASRC Cont...

Sherry Estes  
EPAMAILR522/USEPA/US

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**ASRC Contractor Activities for the United Scrap Lead, OH, Site**

**From:** Lorraine Kos/R5/USEPA/US **Thursday, August 18, 2011 07:11 AM**

**To:** Sherry Estes/R5/USEPA/US@EPA [Hide](#)

**Cc:** Lynn Calvin/R5/USEPA/US@EPA, Evette Jones/R5/USEPA/US@EPA, Sheila Barnes/R5/USEPA/US@EPA

**Sent by:** LORRAINE KOS/R5/USEPA/US

Per your request, listed below are the ASRC Contractor activities for the United Scrap Lead, OH, site (#05H5) for voucher #44.

- Voucher 44 - (04/08/10) - \$1,100.33 - Five contractors spent 30.25 hours searching for and retrieving documents from the site file; cataloging, making folders and labels; indexing and scanning into SDMS, and filing documents into the site file.

Thanks.

Lorraine D. Kos, Task Order Manager  
ASRCMS Contractor  
77 W. Jackson Blvd., #SRC-7J  
Chicago, IL 60604  
Phone: (312) 886-0911  
Fax: (312) 697-2588  
Email: kos.lorraine@epamail.epa.gov

Lynn Calvin --08/17/2011 01:25:45 PM--Can you provide more detail than records management services? (I think we may have done this previo

**From:** Lynn Calvin/R5/USEPA/US  
**To:** LORRAINE KOS/R5/USEPA/US@EPA  
**Date:** 08/17/11 01:25 PM  
**Subject:** Fw: I need some information on a ASRC voucher

Can you provide more detail than records management services? (I think we may have done this previously, but I can't find it.)

----- Forwarded by Lynn Calvin/R5/USEPA/US on 08/17/2011 01:22 PM -----

Attachments: (Click the filename to launch)

[asrc.oversight.2010.pdf](#)

**Inbox (6713)**  
Drafts  
Sent  
Follow Up  
All Documents  
Junk  
Trash  
My Records  
Views  
Folders  
Accra Pac  
Air Case (438)  
Air Detail (201)  
Amoco (34)  
Am. Wire  
Arbor III  
B&B Metals  
Calderon  
Caledonia (38)  
Celina  
CERCLA Settlement  
Chgo Enforce (178)  
Chgo Gen. (1)  
Chgo W. Side  
Chgo. Altgeld  
CLE  
Clermont Co. (1)  
Contracts (73)  
Coshocton (21)  
Daimler Chrysler  
Dawn (137)  
Detroit Edison Disc  
Dow Corning (68)  
ECMS  
EMD Chem (76)  
Estes (617)



August 6, 2013

**VIA FEDERAL EXPRESS**

Director, Superfund Division  
U.S. EPA, Region V  
77 West Jackson Boulevard  
Mail Code S-6J  
Chicago, Illinois 60604

**Re: *REPLY TO U.S. EPA'S STATEMENT OF POSITION***  
***United Scrap Lead Site, Troy, Ohio Site No. 05H5***

Dear Director, Superfund Division:

In its initial Statement of Position submitted under letter of July 3, 2013, the Settling Generator Defendants in this matter indicated that its dispute was solely concerned with the Agency's refusal, through its Associate Regional Counsel, Sherry L. Estes, to provide any explanation of the alleged oversight costs charged to the Settling Generator Defendants nearly 16 years after completion of the remedial action at the United Scrap Lead Site. The subject, therefore, of the Settling Generator Defendants' dispute is very narrow: provide a reasonable description of the task performed by the U.S. EPA employees listed in the oversight cost invoices so that the Settling Generator Defendants can determine if the resulting costs are consistent or inconsistent with the National Contingency Plan ("NCP"). Contrary to Ms. Estes' representation, the Settling Generator Defendants have a reserve account with unallocated funds significantly in excess of the oversight costs at issue. This account was verified nearly a decade ago. The reserve account is not a pre-condition to requesting an explanation of the work being charged as oversight costs.

**THE AGENCY'S RESPONSE**

The Agency's Statement of Position in this dispute, submitted under letter dated July 29, 2013, contains several hundred pages of attachments and several "Declarations" describing U.S. EPA's internal educational program for submittal of time charges and a description of the multiple, often redundant, alleged efforts made by the Agency's staff to review an oversight cost invoice before it is submitted to the Settling Generator Defendants. Yet, despite the educational programs and the claimed redundant evaluations, the Agency's Statement of Position acknowledges that several entries were inappropriate and were billed in error.

{23412 / 01438260 - 1}



The errors were "discovered" only after the Settling Generator Defendants invoked formal dispute resolution. Had the oversight cost invoices contained a very short, reasonable description of the work performed by the employee, it would be reasonably evident to anyone, including the Agency, that errors were being made and that the Settling Generator Defendants should not have been charged for certain time.

### **REPLY TO THE AGENCY'S POSITION**

It is evident from the U.S. EPA's Statement of Position, multiple declarations and the ream of paper attached to the Agency's Statement, that far more time was incurred by the U.S. EPA in objecting to providing the barest of a description for a charged task rather than just providing the description when requested over a year ago. Indeed, the day after the submittal of the U.S. EPA's Statement of Position, Ms. Estes submitted the 5 page Declaration of Sheila Barnes describing the nature of her charges on the oversight cost invoices -- the very explanation requested earlier - but refused - in the informal dispute resolution period.

Historically, the Settling Generator Defendants have cooperated with the U.S. EPA and the Department of Justice ("DOJ") to complete the remedial action at the United Scrap Lead Site, to pay legitimate response and oversight costs, and to assist the DOJ in recovering substantial response costs from recalcitrant PRPs. Indeed, in assisting the U.S. EPA and DOJ, the Settling Generator Defendants have incurred over \$471,000 in attorneys' fees and expenses. When U.S. EPA desperately needed materials in the Settling Generator Defendants' files to prevail against Sensor Metals Co. -- the largest contributor to the United Scrap Lead Site -- the Settling Generator Defendants cooperated and expended the time and money to recover documents from its archives and to provide the requested information. However, when the Settling Generator Defendants request a short explanation of the tasks covered by the disputed oversight invoices, the Agency's response is "no way." Settlements of CERCLA actions should be encouraged -- not discouraged by the Agency's senseless refusals.

The Settling Generator Defendants' obligation to pay "future response costs" under the Consent Decree does not cover all costs that might be tangentially related to the USL Site. The costs of Agency personnel to support the cost recovery litigation against the recalcitrant, non-settling PRPs is not a "future response cost recoverable from the settling parties." Yet the oversight cost invoices at issue contain costs related to attorneys, suggesting some legal work was performed. Without an explanation, there would not appear to be a "covered" activity at this Site that would require the input of the Agency's legal staff. The appointment of a receiver to sell the remediated property for the benefit of the United States is not a "future response cost." There are no "plans, reports and other items pursuant to this Consent Decree" requiring review or development. There has been no new removal or remedial actions. There has been no need to implement, oversee or enforce this Consent Decree. The Settling Generator Defendants completed the Remedial Action on time and in accordance with the Work Plan. The Completion of the Remedial Action was certified by the U.S. EPA on June 4, 2001.

CERCLA limits the recovery of response costs, including oversight costs, to those that are "necessary" and "not inconsistent with the National Contingency Plan." See 42 U.S.C. §9607(a)(4)(A) and (B). It is arbitrary in an oversight invoice to solely note only the name of the individual, the time incurred, the date without using a word or two to describe what was done. A simple two or three words would be sufficient, i.e., "prepare five year report," "travel to Site," "analyzed site data," etc. These shorthand terms are well understood and can be used to determine if the task is "necessary" and otherwise within the tasks contemplated by the NCP. Moreover, a short description would be necessary for a court to determine if the cost is recoverable under the definition of "future response costs" provided in the Consent Decree, Section IV, Paragraph 4.e.

Federal courts have consistently held that the U.S. EPA must provide appropriate documentation in support of its oversight cost bills and has an evidentiary burden when it seeks to recover these costs. See *U.S. v. W. R. Grace & Co. - Conn.*, 280 F. Supp. 2d 1149, 1180 (D. Mont. 2003). This evidentiary standard necessarily requires a description of the task that resulted in a cost sought to be charged. See *U.S. v. Gurley*, 317 F. Supp. 2d 870, 879 (E. D. Ark. 2004) where the United States appropriately described the task as "travel" and provided supporting documentation. Charges that are not documented in this fashion - i.e., with a description of the task or charge -- are inconsistent with the NCP. 40 C.F.R. §300.160(a)(1). See also, *United States v. El Dupont v. Nemours & Company, Inc.*, 432 F.3d 161 (3<sup>rd</sup> Cir. 2005).

In her July 29, 2013 Statement of Position, Ms. Estes cites no rationale or judicial decision status that a simple description of the task that has resulted in an oversight costs need not be provided. In effect, she says "trust us that all charges are appropriate." Yet, she concedes that some charges were for litigation support and billed in error. Moreover, she eventually provides a description for the charges by Ms. Sheila Barnes in a formal Declaration that could have been provided informally over a year ago to avoid this formal dispute resolution process.

If the Agency had spent only a fraction of the time providing a simple explanation than it devoted to opposing the Settling Generator Defendants' request for a simple explanation and in preparing six affidavit-styled "declarations," this formal dispute resolution would not have been necessary. It is arbitrary and capricious -- indeed, a violation of due process -- to withhold basic information from the Settling Generator Defendants that is needed to determine whether or not a charge is appropriate or, indeed, unnecessary and inconsistent with the NCP. Employees, despite very fine training programs, do make mistakes in entering time charges. The fact that mistakes have been made in the contested oversight invoices is confirmed in the Agency's Statement of Position where it is conceded that, at the very least, inappropriate costs in the amount of \$1,218.33 (approximately 5% of the charges) were erroneously billed to the Settling Generator Defendants in this matter.

Director, Superfund Division

August 6, 2013

Page 4

It is appalling that the Settling Generator Defendants are forced to invoke dispute resolution under the Consent Decree every time an oversight cost invoice is submitted due to the lack of a simple explanation for the task being billed. The Agency should provide a reasonable description of the tasks performed by the listed Agency employees. At the very least, the listing of the description will allow the Settling Generator Defendants to acknowledge that the task is well within the definition of "future response costs" and to promptly pay the invoice.

The Director should order his staff to prepare a short, reasonable explanation of the tasks being charged as oversight costs. Upon receipt of the explanations, the Settling Generator Defendants will promptly review the explanations and pay all costs qualifying as "future response costs." If all tasks qualify, the tasks already found to have been billed in error can be deducted from the invoices and this dispute will be concluded.

Respectfully submitted,



Michael A. Cyphert  
Steering Committee Chairman  
United Scrap Lead Respondent Group

MAC:lak

cc: Chief, Environmental Enforcement Section, U.S. Department of Justice  
Chief, Environmental Defense Section, U.S. Department of Justice  
Ms. Lolita Hill, U.S. EPA Remedial Project Manager, Region 5  
Sherry L. Estes, Associate Regional Counsel, Region 5  
United Scrap Lead Respondent Group - Steering Committee Members



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

July 29, 2013

Michael Cyphert  
Walter & Haverfield, LLP  
1301 East 9th Street  
Suite 3500  
Cleveland, OH 44114-1821

Re: EPA's Statement of Position  
United Scrap Lead Site; Troy, Ohio

Dear Mr. Cyphert:

On July 3, 2013, in a letter to the Director of the Superfund Division, the Settling Generator Defendants demanded formal dispute resolution under Section XXI of the Consent Decree entered on September 28, 1998 in *United States v. Atlas Lederer Co, et al*, C-3-91-309 (S.D. Ohio). This demand was received by EPA on July 8, 2013; based upon Paragraph 73.a. of the Consent Decree, this Statement of Position must be served upon Settling Generator Defendants on July 29, 2013.

### BACKGROUND

Under the Consent Decree entered by the Court in 1998, the Settling Generator Defendants are required to reimburse the Superfund for "all Future Response Costs not inconsistent with the NCP." Decree at ¶ 37. The term "Future Response Costs" is broadly defined as including "all costs not inconsistent with the National Contingency Plan incurred by U.S. EPA in connection with the Site after June 30, 1996 and by U.S. DOJ in connection with the Site after September 30, 1996." Id. at ¶ 4e. In practice, however, EPA has limited its recovery of such costs from the Settling Generator Defendants to include oversight costs, including oversight of the work performed under the decree, operation and maintenance activities, five-year reviews, and work performed by the court-appointed receiver.

To recover such costs from the Settling Generator Defendants, the 1998 Consent Decree specified that the United States shall prepare a bill, on an annual basis, that includes a "cost summary" of "direct and indirect costs incurred by U.S. EPA and its contractors," as well as a "cost summary which would reflect costs incurred by U.S. DOJ and its contractors, if any, that





relate to" the decree. Id. at ¶ 37. The Settling Generator Defendants are required to make payment within 90 days of receipt of the bill, unless it determines that "the United States has made an error of if they allege that a cost item that is included represents costs that are inconsistent with the NCP." Id. at ¶ 38.

At present, there are three outstanding "Future Response Cost" bills with a combined value of \$ 22,035.60, covering the three-year period from March 1, 2009 to February 29, 2012. Following a period of "informal" dispute resolution in accordance with the terms of the 1998 Consent Decree, the Settling Generator Defendants invoked "formal" dispute resolution in a letter of July 3, 2013. They raise three arguments. First, they contend that EPA has failed to provide adequate information on the work performed at the Site. Second, they contend the billed costs include duplicative and erroneous charges. Third, they maintain that the billed costs are for response actions inconsistent with the NCP. Lastly, they contend that they have discharged their responsibilities with respect to paying for "Future Response Costs."

## DISCUSSION

The definition of the "Future Response Costs" in the 1998 Consent Decree is very broad. The term is not limited to costs incurred by EPA (or its contractors) in overseeing response actions arising from, or relating to, the Site. Rather, it arguably extends to all costs for response actions not inconsistent with the NCP. Hence, the term includes not only oversight costs, but all expenditures incurred by the United States in pursuing its enforcement action against recalcitrant defendants. That said, EPA has refrained from billing the Settling Generator Defendants for enforcement-related actions. Instead, prior to sending out each bill to the Settling Generator Defendants, EPA has attempted to remove all enforcement-related expenses, leaving only "oversight" costs and other "Future Response Costs" in the bill for the Settling Generator Defendants to pay.

During the period of "informal" dispute resolution, EPA identified one enforcement-related expense that it included with the bills sent to the Settling Generator Defendants. Specifically, EPA realized that Linda Haile, who is responsible for preparing the oversight bill, had charged 0.5 hours of time to oversight costs when, in fact, she should have charged her time to enforcement work. As a result, EPA agreed to deduct this charge from the oversight bill.

Following receipt of the request for "formal" dispute resolution, EPA conducted another review of the disputed bills to remove any other enforcement-related expenses. Based upon this review, EPA has decided to also deduct charges incurred by T. Leverett Nelson and Deborah Garber – two supervising attorneys at EPA, Region 5. Both attorneys supervise all legal work relating to the Site, but we eliminated the costs from the bills on the theory that their charges could have been enforcement-related expenses. We also removed other costs that, upon inquiry with a particular employee we could not document, and based upon prior agreement with counsel for Settling Generator Defendants.



After removing these enforcement-related expenses, the combined valued of the disputed bills is reduced as described in Exhibit G. EPA has reviewed the arguments raised by the Settling Generator Defendants as to why they are not required to pay for the balance of its oversight bills, and we find the arguments to be without merit for the reasons explained below.

**I. Settling Generator Defendants Have Not Complied With the Consent Decree Provisions to Contest Payment of Future Response Costs**

The 1998 Consent Decree sets forth specific obligations as preconditions for invoking dispute resolution. The Settling Generator Defendants, however, have not complied with these preconditions.

Paragraph 38 of Section X [Reimbursement of Response Costs by Settling Defendants] of the Consent Decree requires Settling Generator Defendants to establish a reserve account with respect to disputed expenses. The paragraph specifies that the Settling Generator Defendants shall:

... establish a reserve account, designated as the "Future Costs Reserve" within the United Scrap Lead Respondent Trust Fund (Account No. 75-0046-005) established with National City Bank, Cleveland, Ohio, and remit to that account funds equivalent to the amount of the contested Future Response Costs. The Settling Generator Defendants shall send to the United States, as provided in Section XXVIII [Notices and Submissions], a copy of the ... correspondence that establishes and funds the Future Costs Reserve and a copy of the most recent account statement demonstrating that the Future Costs Reserve has sufficient funds to cover the contested Future Response Costs. Simultaneous with establishment of the Future Costs Reserve, the Settling Generator Defendants shall initiate the Dispute Resolution procedures of Section XXI [Dispute Resolution].

Since the Settling Generator Defendants have made no demonstration that they have set up a Future Costs Reserve, and that the Future Costs Reserve is sufficient to cover all of the disputed oversight bills (the sum total of all three recent oversight bills), it is the position of the EPA enforcement team that the formal dispute of the Settling Generator Defendants cannot go forward until they have established the Future Costs Reserve, and it is fully funded. In order for the Future Costs Reserve to be fully funded, Settling Generator Defendants must pay the following contested oversight bills into the reserve: (1) August 3, 2011 billing for the period March 1, 2009 through February 28, 2010, in the amount of \$1,385.97; (2) September 27, 2011 billing for the period March 1, 2010 through February 28, 2011 in the amount of \$6,208.01, and (3) June 27, 2012 for the period March 1, 2011 through February 28, 2012 in the amount of \$14,441.62.

## **II. EPA Has Provided All Documentation Required by the Consent Decree**

The Settling Defendant argue that that EPA has failed to provide adequate documentation of the work performed at the Site. This contention is incorrect. The 1998 Consent Decree specifies documentation that EPA must provide to the Settling Generator Defendants in order to recover "Future Response Costs." Paragraph 37 states:

The United States will send Settling Generator Defendants a bill, on an annual basis, requiring payment that includes a cost summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors, and a U.S. DOJ-prepared costs summary which would reflect costs incurred by U.S. DOJ and its contractors, if any, that relate to this Consent Decree.

EPA has complied with the requirements of Paragraph 37. Attached to this Statement of Position are the oversight costs billed on August 3, 2011; September 27, 2011; and June 27, 2012. (Exhibit A). All of these billings clearly are within the definition of a cost summary, as set forth above.

The Settling Generator Defendants argue, in essence, that the documentation requirements imposed upon EPA are greater than those set forth in Paragraph 37 of the Consent Decree. They argue that EPA is required to provide a "detailed billing" that explains "the costs incurred for each of the bill's designated employees and pay periods." It is unclear, however, where the Settling Generator Defendants find this obligation. The only support that they cite for this requirement is 40 C.F.R. § 300.160(a)(1) and §300.430(f)(5). Those provisions, however, relate to the documentation required to support the selection of a remedial decision to clean up a site. Consequently, they have no bearing upon the documentation that EPA must provide to recover its "Future Response Costs" under the 1998 Consent Decree.

In any event, EPA has provided the Settling Generators Defendants with detailed billings. In addition to the cost summaries submitted with the bills, EPA provided the Settling Generator Defendants with the information that is attached, as Exhibit 1, to the "Statement of Position" submitted by the Settling Generator Defendants. This information includes a chart that identifies (1) the name and title of each person who charged time to the Site, (2) the amount of time that each person charged, (3) the pay period for each charge, and (4) the oversight responsibilities of the person charging time to the Site. Based upon this information, the Respondent Group has adequate information to determine whether it wishes to challenge the costs on either of the grounds permitted under the decree – namely, an error in the bill or a cost that is for action inconsistent with the NCP. As a result, it is EPA's position that it has satisfied the documentation requirements imposed under the 1998 Consent Decree.

### **III. The Settling Generator Defendants Have Not Shown that the Disputed Bills Include Erroneous Charges**

The Settling Generator Defendants contend that the disputed bills contained erroneous and duplicative charges. This contention is also without merit.

As an initial matter, the Settling Generator Defendants fail to explain the basis for their contention that the bills contain "duplicative" charges. A "duplicative" charge is generally understood to be a charge that is erroneously billed twice. The Settling Generator Defendants, however, identify no examples of "double" billing or "duplicative" billing in their statement of position.

The Settling Generator Defendants also fail to show that the bills contain "erroneous" charges. To support this allegation, the Settling Generator Defendants rely, in part, upon the fact that Ms. Haile charged the Site for 0.5 hours of "oversight" work that was, in fact, enforcement-related work relating to the Site. However, the Settling Generator Defendants cannot reasonably rely upon Ms. Haile's charge as basis for refusing to pay all of the outstanding amounts owed to EPA. The Settling Generator Defendants argue, in essence, that *all* costs charged to the Site should be presumed to be enforcement-related expenses that the Settling Generator Defendants should not be required to pay. This argument, however, proves too much. Ms. Haile was only one of fourteen people who charged time to the Site. The total amount of "enforcement-related" time that she charged to the Site was a half hour – less than 1% of the total cost billed to the Settling Generator Defendants. This is too thin a reed upon which to rest the contention that *all* costs billed to the Settling Generator Defendants were "erroneous." As discussed later in Section IV, EPA thoroughly reviews all billings to remove enforcement-related costs or billing errors. Hence, there is no basis to presume that bills contain errors.

Lastly, the Settling Generators Defendants contend that they were erroneously billed for \$100.76 for groundwater monitoring expenses incurred by EPA's contractor, Booz Allen Hamilton. The Settling Generator Defendants, however, have misunderstood the nature of the charge. Booz Allen Hamilton maintains an electronic database that stores a wide variety of information relating to a number of different Superfund sites, including the Site at issue in this case. The data stored in the database is not limited to groundwater data, but includes all geophysical parameters, including soil and air contamination data. (Attachment B to Estes Decl. at p. C-2). EPA personnel can access the database for the purpose of generating site-specific maps to support various agency actions, such as the five-year reviews that EPA is required to conduct with respect to sites (such as the Site at issue here) where a hazardous substance remains on-site after performance of the cleanup.

Contrary to the contention of the Settling Generator Defendants, Booz Allen Hamilton did not charge \$100.76 for groundwater monitoring activities at the Site. Rather, they charged the Site for expenses associated with maintaining Site-specific data in the database. Given that

this charge was not inconsistent with the NCP, it was properly billed to the Settling Generator Defendants.

#### **IV. The Settling Generator Defendants Have Not Shown that Costs Included in the Bills Are Inconsistent with the NCP**

The Settling Generator Defendants assert that the cost included in the bills are inconsistent with the NCP, alleging that EPA's costs are "unnecessary and excessive in light of the NCP." ("Statement of Position" at p. 4). The Settling Generator Defendants, however, misinterpret the obligations of the NCP. There is no requirement under the NCP, or under the 1998 Consent Decree, for EPA to prove the reasonableness of its costs. As Judge Rice has explained, CERCLA allows the government to "recover the costs it has incurred without ascertaining their reasonableness." (Doc. 737). All costs incurred by government "that are not inconsistent with the NCP are conclusively presumed to be reasonable."<sup>1</sup> *Id.* The same is true under the Consent Decree. The United States bears no obligation to prove the reasonableness of its bills. Once the United States demonstrates that it has incurred a cost in connection with the Site, the Settling Generator Defendants shall pay it, unless they show that the cost is inconsistent with the NCP.

Here, the Settling Generators Defendants have not produced any evidence that the billed expenses are inconsistent with the NCP. They correctly note that the NCP (40 C.F.R. § 300.160) requires EPA to "provide accurate accounting" of costs incurred for response actions, but they fail to show that EPA has violated this requirement.

As detailed in the attached Declaration of Richard Gary, Exhibit D, the Staff Director of the Payroll Support and Accounting and Reporting Sections, EPA has adopted several systemic controls over its time management and cost accounting systems that ensure site-specific cost reporting to a reasonable degree of accuracy. EPA's time accounting system is PeoplePlus. One of the first aspects of the employee accuracy in that system is that employees are trained to enter their data into the system. An example of the training which is used is set forth in Attachment A to Mr. Gray's Declaration.

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<sup>1</sup> Judge Rice cited a number of decisions in support of this holding. See United States v. Northeastern Pharmaceutical and Chemical Co., 810 F.2d 726, 747 (8<sup>th</sup> Cir. 1986) (noting that "'all costs' incurred by the government that are not inconsistent with the NCP are conclusively presumed to be reasonable" and that "CERCLA does not refer to 'all reasonable costs' but simply to 'all costs'"); United States v. Hardage, 982 F.2d 1436, 1442-43 (10<sup>th</sup> Cir. 1992) (noting that "[o]nly response actions--i.e., removal or remedial actions--can be inconsistent with the NCP, which can be demonstrated by a showing that the government's choice of response action was arbitrary and capricious and that '[a]s long as the government's choice of response action is not inconsistent with the NCP, its costs are presumed to be reasonable and therefore recoverable'").

As Mr. Gary's Declaration makes clear, EPA employees who work on Superfund and oil spill sites record their time charging on a bi-weekly basis into the PeoplePlus system and "attest and submit" their time cards. There are two other potential checks on the employee's submitted time card; each section has a timekeeper who is aware of employee time and attendance, and has the authority to alter the timecard if he or she notices a discrepancy between the employee's reported time, and the employee's attendance in the office. In addition, for each time card, each employee's supervisor must affirmatively "verify and submit" each employee's charges before that employee can be paid. In doing so, the supervisor is verifying not only an employee's time and attendance, but also the employee's site-specific charging, because a supervisor knows what matters the employees in his or her section will be working on.

After the payroll system processes the information from PeoplePlus, Mr. Gray's Declaration explains that it is also integrated into EPA's accounting system, which was called the Integrated Financial Management System or IFMS for most of the billing periods in question for this formal dispute resolution. From IFMS, the data is incorporated into EPA's site-specific system, known as the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS). Starting in FY 2012, in October, 2011, EPA began to use the Compass System instead of IFMS. Now that EPA is using Compass, new payroll information is incorporated into SCORPIOS from Compass.

Mr. Gray's Declaration describes that SCORPIOS is a multi-user data management system that EPA developed to organize cost information and produce reports that summarize costs on a site-specific basis. SCORPIOS organizes site-specific costs into categories such as EPA payroll, travel, and contractual costs associated with response actions. In order to prepare oversight bills, this cost information is extracted from IFMS or Compass, EPA's accounting software.

Attached to Mr. Gray's Declaration is EPA Guidance (Attachment B to Gray Declaration) which describes some of the internal controls that EPA performs in order to ensure the integrity of the information in its time accounting and cost accounting system. These reports are used to identify a charging site reported in PeoplePlus which does not exist, or a fixed account number which does not exist. Sometimes an expired code or an incorrect organization code is also identified, or the employee uses the wrong action code with certain program results code. Mr. Gray's Declaration makes clear that all of these checks are important for maintaining accounting and billing integrity.

If mistakes are identified, Mr. Gray's Declaration explicates that the Regional Finance Office in question is given a copy of the error report, and the individual EPA employee is asked to correct his or her timecard. The employee is once again asked to "attest and submit" and his/her supervisor to "verify and submit" because they are closest to the site-specific charging. For instance, if somehow an employee charged to a site which does not exist, only the employee or his supervisor could determine which site was the correct site spill identifier to which he or

she should have charged. Once attested and verified, the corrected information is fed into PeoplePlus, and from PeoplePlus into EPA's accounting software, and into SCORPIOS.

In order to generate an oversight billing to send to a PRP group which has a payment obligation under a consent decree or other settlement document, EPA performs an additional, site-specific round of checks. As detailed in the attached Declaration of Sheila Barnes, Exhibit E, the first step involved in preparing an oversight bill is having a site "built" through the SCORPIOS system. In order to do this, she generates a request to her section colleague, Darius Taylor, by telling him the name of the site, the site spill identifier, and the billing period. Taylor downloads the information into the SCORPIOS program and produces a draft cost summary report that shows only data for costs that have actually been paid. From SCORPIOS, the cost accountant, in this case, Barnes, then generates the itemized cost summary that summarizes all of the costs paid at a particular site. At the same time, Barnes prepares a draft cover letter for the billing, and requests DOJ oversight costs, since EPA also bills PRP groups for DOJ oversight costs.

After Mr. Taylor has generated a draft cost report, Ms. Barnes' Declaration explains that she must then reconcile the report. This consists of checking the summary report of employee time and hours against the individual employee time in the PeoplePlus system, and the amounts listed for employee travel against the approved vouchers in the GovTrip system. She goes on to describe that, in order to reconcile Superfund cooperative agreements, she checks with the Remedial Project Manager (RPM) or the Project Officer to make sure that the cooperative agreements were paid and that the amounts match the amount generated in her draft cost report. For contracts with site-specific charges, she checks to see whether the charge set forth in the draft cost summary report matches up with the treasury schedule. If it does not, she must rationalize the cost with Betty Hamilton of Research Triangle Park. The draft report might already contain certain amounts for DOJ costs. She has been instructed that if certain DOJ codes appear in the draft report, these DOJ costs are to be removed from the report. Finally, she checks the report to see if there appear to be any costs that do not appear to belong to the site under review.

After Ms. Barnes has reconciled the draft cost report for any site, she sends it to the site attorney and RPM for additional review. The attorney and RPM are always very knowledgeable about the work which has occurred at the site, and also about the parameters of the particular settlement instrument in question, so that they know whether a cost that appears on the draft billing should actually be billed. With regard to the United Scrap Lead site, Ms. Barnes sends the draft billing to Sherry Estes, the site attorney, and Lolita Hill, the RPM.

Sherry Estes' Declaration (Exhibit B) describes the process which she uses in reviewing the oversight bill for United Scrap Lead. First, since she has been assigned to the Site for most of her twenty-three years that she has been employed by EPA, she is aware of most of the activities which have occurred during any given billing period. She knows which employees'



work generally is completed in support of Future Response Costs at the Site, and which activities support EPA's on-going cost recovery litigation.

However, as Ms. Estes' Declaration makes clear, there are some employees, such as supervisors in the Office of Regional Counsel, who have overlapping roles, and could be charging activities that are either defined as Future Response Costs, or would qualify as litigation support activities, and should therefore be removed from the billing. In many instances, though, Ms. Estes explains that it is not clear from the draft cost summary whether the costs should remain or should be excluded from the billing, and that the only way to be absolutely sure would be to incur additional costs. When these ambiguous EPA employee time charges are included in very small increments (fifteen minute to one-half hour), Ms. Estes asserts that she usually makes reasonable assumptions about whether the costs are more likely to be oversight costs, which she keeps in the bill, or litigation-related expenses, which she removes.

As further explicated in her Declaration, Ms. Estes also examines vouchers listed under various contracts charged to the Site. One of the contractors that typically has costs charged to the Site is the contractor that manages the Superfund Records Center, which has varied according to the time period. For the billings which are part of this formal dispute, the contractor has been ASRC Management Services, Inc. Ms. Estes is aware that some of the work which they do would be chargeable under the Consent Decree, and other work would not be. Thus, she explains in her Declaration that she sends an email message to the EPA Project Officer, who is Lorraine Kos. Ms. Kos in turn instructs the contractor to provide documentation regarding the activities which its employees have completed in reference to the Site.

In the documents which were attached to her letter of October 1, 2012 to Michael Cyphert, and were submitted by him as Exhibit 1 of his initial Statement of Position in this formal dispute resolution, it is possible to see how Ms. Estes winnows the draft bill down to the oversight bill which is sent to the Settling Generator Defendants. Ms. Kos' email of January 24, 2011 at 9:40 a.m. (Attachment B to Ms. Estes' letter of October 1, 2012 to Michael Cyphert) indicated that Voucher #'s 31 and #41 for the billing dated August 3, 2011 were based upon ORC requests. Voucher # 32 (for only a total of \$27.47) was based upon an RPM request for one date and an ORC request later on the same month, while Voucher # 33 was based upon an RPM request. However, in the August 3, 2011 billing, Vouchers #'s 31 and 41 were not set forth on the final billing sent to the PRP committee. As explained in Ms. Estes' Declaration, Vouchers #'s 31 and 41 were listed on the draft billing. Once Ms. Estes realized that the Vouchers were due to ORC requests, and combining this knowledge with her knowledge of events in the cost recovery litigation at the time of the requests, she knew that these requests for contractor assistance in the Superfund Record Center were in support of the cost recovery litigation. Accordingly, she had these two Vouchers removed from the draft billing.

As detailed in Ms. Estes' Declaration, Voucher # 44, for \$1,100.33, which was billed in the September 27, 2011 billing, was further described in her letter of October 1, 2012, Attachment D, which consisted of an email from Ms. Kos to Ms. Estes dated August 18, 2011.

The response described the response activities as: "Five contractors spent 30.25 searching for and retrieving documents from the site file; cataloging, making folders and labels; indexing and scanning into SDMS, and filing documents into the site file." As Ms. Estes Declaration makes clear, the email was sent prior to the oversight billing, and is typical of her normal review of a draft oversight bill, and was not part of an after-the-fact effort to provide more detail about the bill to Mr. Cyphert. Ms. Kos' description of the contractor's activity of cataloging, organizing and conserving the documents for the Site, showed that that the Site record will continue to be useful in the future both to EPA staff and to the public. EPA staff will need to conduct continued oversight of the Site, and discharge their statutory duties under CERCLA to conduct five-year reviews. The public also has the right to request documents under FOIA, and EPA has the obligation to make documents available and to conserve those documents under the Federal Records Act, 44 U.S.C. § 31. Thus, these charges are Future Response Costs as defined by the Consent Decree.

In addition, as detailed in her Declaration (Exhibit F), Lolita Hill also reviews the oversight billings before they are sent to the Settling Generator Defendants for payment. Ms. Barnes' Declaration (Exhibit E) states that she then takes out all of the costs designated as litigation support costs from the draft billing, and generates a revised draft for Ms. Estes' review. Often, with a "cleaner" bill to review, Ms. Barnes explains that Ms. Estes will notice additional litigation-related charges, although much fewer the second time around. For this reason, Ms. Barnes' Declaration explains that she and Ms. Estes often have to go through a couple of rounds of draft billings before together they work out an oversight bill that Ms. Estes believes is appropriate to send to the Settling Generator Defendants.

EPA submits that the combination of (1) the controls set up involving the individual site-charging employee and that person's immediate supervisor into EPA's time accounting system, PeoplePlus; (2) the systemic quality control checks completed on a bi-weekly basis on EPA's cost accounting system that can generate improper account charging notices, and the correction of the errors that feed back into the PeoplePlus system; (3) the reconciliation checks performed by the Superfund accountant to generate the draft bill; and (4) the interactions between the Superfund accountant, the Site attorney and the Site RPM to remove incorrect charges and to generate a corrected bill together lead to a system that is designed to produce oversight billings with a very reasonable probability of being not inconsistent with the NCP.

#### **V. The Settling Generator Defendants Have Not Discharged Their Responsibilities Under the 1998 Consent Decree**

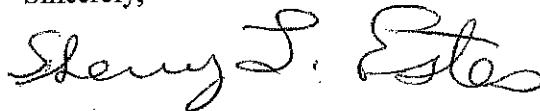
The Settling Generator Defendants concede that the 1998 Consent Decree requires them to reimburse EPA for "Future Response Costs," but they argue that they have "discharged" this obligation. This is incorrect. The 1998 Consent Decree imposes no time limits on the obligation of the Settling Generator Defendant to pay for response costs that are not inconsistent with the NCP. As long as such costs continue to be incurred, the Settling Generator Defendants' obligations under the 1998 Consent Decree remain active.

At present, the Settling Generator Defendants owe more than \$22,000 in response costs incurred after March 2009. Further, the Settling Generator Defendants will be required to pay for response costs incurred the future. Such costs will include the expense of conducting five-year reviews of the remedy – an activity that EPA is required, by law, to conduct due to the lead contamination that remains on site. Such costs will also include expenses incurred by the court-appointed receiver, who is presently searching for a responsible buyer for the Site. Consequently, EPA finds no merit to the contention that the Settling Generator Defendants have discharged their obligations under the 1998 Consent Decree.

### CONCLUSION

EPA has shown that the Settling Generator Defendants have not met the prerequisites set forth in the Consent Decree for disputing Future Response Costs, and, for this reasons, request that the Director of the Superfund Division rule that their invocation of formal dispute resolution is ineffective until they comply with these Consent Decree prerequisites. EPA further requests that the Director reject the contentions raised by the Settling Generator Defendants. They have not proven that the costs are inadequately documented. Nor have they shown the costs are erroneous or inconsistent with the NCP. Finally, they have not shown that their obligations under the 1998 Consent Decree have been discharged. Therefore, based upon the argument and evidence set forth by EPA in this Statement of Position, and the incorporated Exhibit 1 of Mr. Cyphert's Statement of Position, EPA requests that the Division Director, Superfund Division, find that EPA is entitled to prevail in this formal dispute resolution. EPA asks that the Division Director find that the Settling Generator Defendants owe EPA 100% of the Future Response Costs set forth in the oversight billings of August 3, 2010; September 27, 2011; and June 27 2012, except for those costs which EPA has indicated in Exhibit G of this Statement of Position that were billed in error.

Sincerely,



Sherry L. Estes  
Associate Regional Counsel

Encl.  
cc. D. Reyher  
J. Warren



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

AUG 03 2011

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

7001-0320-0006-1563-4569

Michael A. Cyphert  
Walter & Haverfield LLP  
The Tower at Erieview - Suite 3500  
1301 E. Ninth Street  
Cleveland, OH 44114-1821

RE: United Scrap Lead, Troy, OH  
Site No. 05H5

Dear Mr. Cyphert:

The enclosed billing is for the recovery of costs incurred by the U.S. Environmental Protection Agency (EPA) for oversight activities, performed under the authority of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended for the period March 1, 2009 through February 28, 2010. EPA is due \$1,385.97. These costs were incurred for the United Scrap Lead site. This bill is solely for recovery of government oversight costs associated with this site and any fines and/or penalties due will be billed separately.

This billing invoice is being forwarded to you for payment based upon the Consent Decree, C3-91-309. Please make your check payable to EPA Hazardous Substance Superfund and forward your payment to the following address:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

To avoid additional charges, payment must be received at the U.S. EPA P.O. Box within 90 days of your receipt of this bill. If payment is not received within the above referenced time frames, interest will accrue from the date of your receipt at the rate of 0.69% per annum.

Exhibit A

If there are any questions regarding the legality of this bill, please contact Sherry L. Estes at (312) 886-7164 or mail comments to the following address:

U.S. Environmental Protection Agency  
ATTN: Sherry L. Estes  
77 West Jackson Blvd. - C-14J  
Chicago, Illinois 60604

Any disputes regarding any contested amounts must be brought pursuant to the provisions of the Consent Decree and within the time frames provided by the Decree. If there are any other questions, please contact U.S. EPA's Remedial Project Manager, Lolita Hill, at (312) 353-1621 or mail comments to the following address:

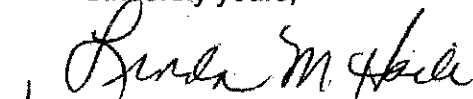
U. S. Environmental Protection Agency  
Attn: Lolita Hill  
77 W. Jackson Blvd. - SR-6J  
Chicago, Illinois 60604

To ensure that your payment is properly recorded by EPA for the period March 1, 2009 through February 28, 2010, the following information must be included on the face of your payment check:

United Scrap Lead, Troy, OH  
Account No. **(2751126S066)**  
Site No. 05H5

Thank you for your cooperation.

Sincerely yours,



for Richard D. Hackley, Chief  
Program Accounting & Analysis Section

Enclosures

cc: Sherry L. Estes, C-14J  
Lolita Hill, SR-6J

Lori Weidner, Accountant, US EPA, Cincinnati Finance Center

## Itemized Cost Summary

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

<b>REGIONAL PAYROLL COSTS .....</b>	<b>\$643.19</b>
<b>INTERAGENCY AGREEMENT (IAG)</b>	
GENERAL SERVICES ADMINISTRATION (DW47948119) .....	\$101.76
<b>SUPERFUND COOPERATIVE AGREEMENT (SCA)</b>	
OHIO E.P.A. (V98568703) .....	(\$0.01)
<b>TECHNICAL SERVICE AND SUPPORT</b>	
ASRC MANAGEMENT SERVICES, INC. (EPW05052) .....	\$112.39
<b>EPA INDIRECT COSTS .....</b>	<b>\$528.64</b>
<b>Total Site Costs:</b>	<b>\$1,385.97</b>



## Regional Payroll Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
ESTES, SHERRY L.	2009	26	0.25	20.04
GENERAL ATTORNEY	2010	06	0.75	46.04
			1.00	\$66.08
GARBER, DEBORAH	2009	15	1.00	79.89
SUPV GENERAL ATTORNEY			1.00	\$79.89
HAILE, LINDA MARIA	2010	05	0.50	30.73
ACCOUNTANT			0.50	\$30.73
JONES, TERESA	2009	11	0.25	14.59
ENV.PROTECTION SPECIALIST		22	0.25	14.59
			0.50	\$29.18
NELSON, THOMAS LEVERETT	2010	10	0.25	18.63
SUPERVISORY GENERAL ATTORNEY			0.25	\$18.63
PODOWSKI, ANDREW A.	2009	12	1.00	70.34
TOXICOLOGIST			1.00	\$70.34
SAUNDERS, VINCENT E.	2009	23	1.00	63.35
		25	4.50	284.99
			5.50	\$348.34
Total Regional Payroll Costs			9.75	\$643.19

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

INTERAGENCY AGREEMENT (IAG)

Federal Agency: GENERAL SERVICES ADMINISTRATION

IAG Number: DW47948119

Project Officer(s): RHODES, EARLENE

Dates of Service: From: To:

Summary of Service:

Total Costs: \$101.76

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
2747 2	03/09/2009	0.00	27091002 03/09/2009	101.76
			Total:	<u><u>\$101.76</u></u>

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

SUPERFUND COOPERATIVE AGREEMENT (SCA)

State Agency: OHIO E.P.A.  
SCA Number: V98568703  
Project Officer(s): Glynis Landers  
Dates of Service: From: 04/01/2006 To: 03/31/2009  
Summary of Service:  
Total Costs: \$-0.01

<u>Drawdown Number</u>	<u>Drawdown Date</u>	<u>Drawdown Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
311334820	12/22/2009	14,739.11	00263997341 12/22/2009	-0.01
			Total:	\$-0.01

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

TECHNICAL SERVICE AND SUPPORT

Contractor Name: ASRC MANAGEMENT SERVICES, INC.

EPA Contract Number: EPW05052

Delivery Order Information	<u>DO #</u>	<u>Start Date</u>	<u>End Date</u>
	66	03/30/2009	05/31/2009

Project Officer(s): PFUNDHELLER, JANET

Dates of Service: From: 02/23/2009 To: 12/31/2009

Summary of Service: ADMINISTRATIVE SUPPORT SERVICES

Total Costs: \$112.39

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
32	05/10/2009	72,835.87	R9A98 06/05/2009	27.47
33	06/10/2009	80,872.84	R9B84 07/08/2009	84.92
			Total:	<u>\$112.39</u>

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

<u>Fiscal Year</u>	<u>Direct Costs</u>	<u>Indirect Rate( %)</u>	<u>Indirect Costs</u>
2009	761.94	61.66%	469.82
2010	95.39	61.66%	58.82
	<u>857.33</u>		
Total EPA Indirect Costs			<u>\$528.64</u>

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
ESTES, SHERRY L.	2009	26	20.04	61.66%	12.36
			20.04		\$12.36
GARBER, DEBORAH	2009	15	79.89	61.66%	49.26
			79.89		\$49.26
JONES, TERESA	2009	11	14.59	61.66%	9.00
		22	14.59	61.66%	9.00
			29.18		\$18.00
PODOWSKI, ANDREW A.	2009	12	70.34	61.66%	43.37
			70.34		\$43.37
SAUNDERS, VINCENT E.	2009	23	63.35	61.66%	39.06
		25	284.99	61.66%	175.72
			348.34		\$214.78
Total Fiscal Year 2009 Payroll Direct Costs:			547.79		\$337.77

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
DW47948119	2747 2	03/09/2009	101.76	0.00	61.66%	62.75
			101.76	0.00		\$62.75
EPW05052	32	06/05/2009	27.47	0.00	61.66%	16.94



## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
EPW05052	33	07/08/2009	84.92	0.00	61.66%	52.36
			112.39	0.00		\$69.30

Total Fiscal Year 2009 Other Direct Costs:

214.15	0.00	\$132.05
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Total Fiscal Year 2009:

761.94	\$469.82
--------	----------

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
ESTES, SHERRY L.	2010	06	46.04	61.66%	28.39
			46.04		\$28.39
HAILE, LINDA MARIA	2010	05	30.73	61.66%	18.95
			30.73		\$18.95
NELSON, THOMAS LEVERETT	2010	10	18.63	61.66%	11.49
			18.63		\$11.49

Total Fiscal Year 2010 Payroll Direct Costs:

95.40	\$58.83
-------	---------

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Cost from MARCH 1, 2009 THROUGH FEBRUARY 28, 2010

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
V98568703	311334820	12/22/2009	-0.01	0.00	61.66%	-0.01
			-0.01	0.00		\$-0.01
Total Fiscal Year 2010 Other Direct Costs:			-0.01	0.00		\$-0.01
Total Fiscal Year 2010:				95.39		\$58.82
Total EPA Indirect Costs						\$528.64





SEP 27 2011

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

7001-0320-0005-8915-7699

Michael A. Cyphert  
Walter & Haverfield LLP  
The Tower at Erieview - Suite 3500  
1301 E. Ninth Street  
Cleveland, OH 44114-1821

RE: United Scrap Lead, Troy, OH  
Site No. 05H5

Dear Mr. Cyphert:

The enclosed billing is for the recovery of costs incurred by the U.S. Environmental Protection Agency (EPA) for oversight activities, performed under the authority of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended for the period March 1, 2010 through February 28, 2011. EPA is due \$6,208.01. These costs were incurred for the United Scrap Lead site. This bill is solely for recovery of government oversight costs associated with this site and any fines and/or penalties due will be billed separately.

This billing invoice is being forwarded to you for payment based upon the Consent Decree, C3-91-309. Please make your check payable to EPA Hazardous Substance Superfund and forward your payment to the following address:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

To avoid additional charges, payment must be received at the U.S. EPA P.O. Box within 90 days of your receipt of this bill. If payment is not received within the above referenced time frames, interest will accrue from the date of your receipt at the rate of 0.69% per annum.



If there are any questions regarding the legality of this bill, please contact Sherry L. Estes at (312) 886-7164 or mail comments to the following address:

U.S. Environmental Protection Agency  
ATTN: Sherry L. Estes  
77 West Jackson Blvd. - C-14J  
Chicago, Illinois 60604

Any disputes regarding any contested amounts must be brought pursuant to the provisions of the Consent Decree and within the time frames provided by the Decree. If there are any other questions, please contact U.S. EPA's Remedial Project Manager, Lolita Hill, at (312) 353-1621 or mail comments to the following address:

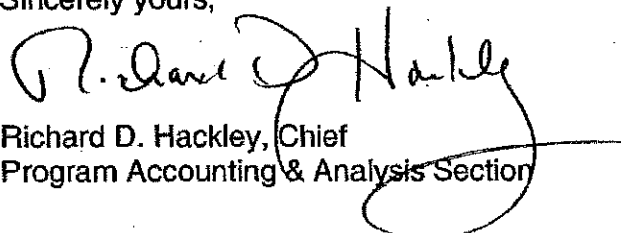
U. S. Environmental Protection Agency  
Attn: Lolita Hill  
77 W. Jackson Blvd. - SR-6J  
Chicago, Illinois 60604

To ensure that your payment is properly recorded by EPA for the period March 1, 2010 through February 28, 2011, the following information must be included on the face of your payment check:

United Scrap Lead, Troy, OH  
Account No. (2751126S117)  
Site No. 05H5

Thank you for your cooperation.

Sincerely yours,

  
Richard D. Hackley, Chief  
Program Accounting & Analysis Section

Enclosures

cc: Sherry L. Estes, C-14J  
Lolita Hill, SR-6J

Lori Weidner, Accountant, US EPA, Cincinnati Finance Center

## Itemized Cost Summary

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

<b>REGIONAL PAYROLL COSTS .....</b>	<b>\$1,902.67</b>
<b>SUPERFUND COOPERATIVE AGREEMENT (SCA)</b>	
OHIO EPA (V98568704) .....	\$526.85
<b>TECHNICAL SERVICE AND SUPPORT</b>	
ASRC MANAGEMENT SERVICES, INC. (EPW05052) .....	\$1,384.68
<b>EPA INDIRECT COSTS .....</b>	<b>\$2,393.81</b>
<b>Total Site Costs:</b>	<b>\$6,208.01</b>

## Regional Payroll Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
BARNES, SHEILA	2010	12	1.00	47.87
FINANCIAL SPECIALIST		13	1.00	47.87
		26	8.00	382.93
		27	1.50	72.19
	2011	01	1.00	47.67
		02	1.50	71.81
		04	8.00	382.93
			22.00	\$1,053.27
ESTES, SHERRY L.	2010	18	0.25	21.03
GENERAL ATTORNEY	2011	02	0.75	63.34
		04	0.50	40.37
		09	1.00	84.78
			2.50	\$209.52
GARBER, DEBORAH	2011	03	1.50	122.42
SUPV GENERAL ATTORNEY		04	1.75	142.81
			3.25	\$265.23
HILL, LOLITA A.	2011	03	4.00	270.30
ENVIRONMENTAL ENGINEER			4.00	\$270.30
JONES, TERESA	2010	18	0.25	15.30
ENV.PROTECTION SPECIALIST	2011	04	0.25	15.36
			0.50	\$30.66
PODOWSKI, ANDREW A.	2010	26	1.00	73.69
TOXICOLOGIST			1.00	\$73.69
Total Regional Payroll Costs			33.25	\$1,902.67

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

SUPERFUND COOPERATIVE AGREEMENT (SCA)

State Agency: OHIO EPA  
SCA Number: V98568704  
Project Officer(s): Glynis Landers  
Dates of Service: From: 04/01/2009 To: 03/31/2011  
Summary of Service:  
Total Costs: \$526.85

<u>Drawdown Number</u>	<u>Drawdown Date</u>	<u>Drawdown Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
311334820CV	08/04/2010	14,507.07	02243997341 08/04/2010	204.71
311334820CV	09/01/2010	143.72	02453997341 09/01/2010	47.56
311334820CV	10/07/2010	37,422.80	12863997341 10/07/2010	274.58
Total:				<u>\$526.85</u>



## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

TECHNICAL SERVICE AND SUPPORT

Contractor Name: ASRC MANAGEMENT SERVICES, INC.

EPA Contract Number: EPW05052

Delivery Order Information	<u>DO #</u>	<u>Start Date</u>	<u>End Date</u>
	66	01/01/2010	12/31/2010

Project Officer(s): CALVIN, LYNN  
PFUNDHELLER, JANET

Dates of Service: From: 01/01/2010 To: 12/31/2010

Summary of Service: ADMINISTRATIVE SUPPORT SERVICES

Total Costs: \$1,384.68

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
42	02/12/2010	74,846.29	R0483 03/12/2010	186.04
44	04/08/2010	73,253.52	R0651 05/06/2010	1,100.33
46	06/10/2010	87,018.36	R0852 07/09/2010	47.82
51	10/10/2010	85,340.61	R1118 11/12/2010	18.57
54	01/10/2011	97,991.86	R1394 02/04/2011	31.92
Total:				<u>\$1,384.68</u>

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

<u>Fiscal Year</u>	<u>Direct Costs</u>	<u>Indirect Rate( %)</u>	<u>Indirect Costs</u>
2010	2,247.34	62.76%	1,410.44
2011	1,566.86	62.76%	983.37
	<u>3,814.20</u>		
Total EPA Indirect Costs			<u>\$2,393.81</u>

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
BARNES, SHEILA	2010	12	47.87	62.76%	30.04
		13	47.87	62.76%	30.04
		26	382.93	62.76%	240.33
		27	72.19	62.76%	45.31
			550.86		\$345.72
ESTES, SHERRY L.	2010	18	21.03	62.76%	13.20
			21.03		\$13.20
JONES, TERESA	2010	18	15.30	62.76%	9.60
			15.30		\$9.60
PODOWSKI, ANDREW A.	2010	26	73.69	62.76%	46.25
			73.69		\$46.25
Total Fiscal Year 2010 Payroll Direct Costs:			660.88		\$414.77

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
EPW05052	42	03/12/2010	186.04	0.00	62.76%	116.76
	44	05/06/2010	1,100.33	0.00	62.76%	690.57
	46	07/09/2010	47.82	0.00	62.76%	30.01
			<u>1,334.19</u>	<u>0.00</u>		<u>\$837.34</u>
V98568704	311334820CV	08/04/2010	204.71	0.00	62.76%	128.48

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
V98568704	311334820CV	09/01/2010	47.56	0.00	62.76%	29.85
			252.27	0.00		\$158.33
Total Fiscal Year 2010 Other Direct Costs:			1,586.46	0.00		\$995.67
Total Fiscal Year 2010:			2,247.34			\$1,410.44

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BARNES, SHEILA	2011	01	47.67	62.76%	29.92
		02	71.81	62.76%	45.07
		04	382.93	62.76%	240.33
			502.41		\$315.32
ESTES, SHERRY L.	2011	02	63.34	62.76%	39.75
		04	40.37	62.76%	25.34
		09	84.78	62.76%	53.21
			188.49		\$118.30
GARBER, DEBORAH	2011	03	122.42	62.76%	76.83
		04	142.81	62.76%	89.63
			265.23		\$166.46
HILL, LOLITA A.	2011	03	270.30	62.76%	169.64
			270.30		\$169.64

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
JONES, TERESA	2011	04	15.36	62.76%	9.64
			15.36		\$9.64
Total Fiscal Year 2011 Payroll Direct Costs:			1,241.79		\$779.36

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
EPW05052	51	11/12/2010	18.57	0.00	62.76%	11.65
	54	02/04/2011	31.92	0.00	62.76%	20.03
			50.49	0.00		\$31.68
V98568704	311334820CV	10/07/2010	274.58	0.00	62.76%	172.33
			274.58	0.00		\$172.33
Total Fiscal Year 2011 Other Direct Costs:			325.07	0.00		\$204.01
Total Fiscal Year 2011:			1,566.86			\$983.37

Total EPA Indirect Costs

\$2,393.81



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 27 2012

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

7009-1680-0000-7643-8711

Michael A. Cyphert  
Walter & Haverfield LLP  
The Tower at Erieview - Suite 3500  
1301 E. Ninth Street  
Cleveland, OH 44114-1821

RE: United Scrap Lead, Troy, OH  
Site No. 05H5

Dear Mr. Cyphert:

The enclosed billing is for the recovery of costs incurred by the U.S. Environmental Protection Agency (EPA) for oversight activities, performed under the authority of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended for the period March 1, 2011 through February 29, 2012. EPA is due \$14,441.62.

These costs were incurred for the United Scrap Lead site. This bill is solely for recovery of government oversight costs associated with this site and any fines and/or penalties due will be billed separately.

This billing invoice is being forwarded to you for payment based upon the Consent Decree, C3-91-309. Please make your check payable to EPA Hazardous Substance Superfund and forward your payment to the following address:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

To avoid additional charges, payment must be received at the U.S. EPA P.O. Box within 90 days of your receipt of this bill. If payment is not received within the above referenced time frames, interest will accrue from the date of your receipt at the rate of 0.74% per annum.



If there are any questions regarding the legality of this bill, please contact Sherry L. Estes at (312) 886-7164 or mail comments to the following address:

U.S. Environmental Protection Agency  
ATTN: Sherry L. Estes  
77 West Jackson Blvd. - C-14J  
Chicago, Illinois 60604

Any disputes regarding any contested amounts must be brought pursuant to the provisions of the Consent Decree and within the time frames provided by the Decree. If there are any other questions, please contact U.S. EPA's Remedial Project Manager, Lolita Hill, at (312) 353-1621 or mail comments to the following address:


U. S. Environmental Protection Agency  
Attn: Lolita Hill  
77 W. Jackson Blvd. - SR-6J  
Chicago, Illinois 60604

To ensure that your payment is properly recorded by EPA for the period March 1, 2011 through February 29, 2012, the following information must be included on the face of your payment check:

United Scrap Lead, Troy, OH  
Account No. **(2751226S0100)**  
Site No. 05H5

Thank you for your cooperation.

Sincerely yours,



Richard D. Hackley, Chief  
Program Accounting & Analysis Section

Enclosures

cc: Sherry L. Estes, C-14J  
Lolita Hill, SR-6J

Lori Weidner, Accountant, US EPA, Cincinnati Finance Center

## Itemized Cost Summary

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

REGIONAL PAYROLL COSTS .....	\$7,561.83
HEADQUARTERS PAYROLL COSTS .....	\$135.36
ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT	
TOEROEK ASSOCIATES INC. (EPW10011) .....	\$1,218.33
INTERAGENCY AGREEMENT (IAG)	
DEPARTMENT OF JUSTICE (DOJ/OVERSIG) .....	\$342.38
SUPERFUND COOPERATIVE AGREEMENT (SCA)	
OHIO EPA (V98568704) .....	\$182.74
TECHNICAL SERVICE AND SUPPORT	
ASRC MANAGEMENT SERVICES, INC. (EPW05052) .....	\$235.49
EPA INDIRECT COSTS .....	\$4,765.49
Total Site Costs:	<u>\$14,441.62</u>

## Regional Payroll Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
BARNES, SHEILA FINANCIAL SPECIALIST	2011	14	2.50	120.07
		16	2.00	96.05
		17	2.50	120.06
		18	3.00	144.06
		20	1.00	48.03
		22	2.00	96.31
		23	6.00	288.14
		24	4.00	186.20
		26	5.00	240.13
		27	7.00	335.44
		2012	01	433.43
			02	144.06
			03	147.68
			50.00	\$2,399.66
DABABNEH, FOUAD N. ENVIRONMENTAL ENGINEER	2012	01	5.00	313.89
		03	1.00	62.87
			6.00	\$376.76
ESTES, SHERRY L. GENERAL ATTORNEY	2011	17	0.25	21.19
		18	0.75	63.60
		19	3.75	317.96
		20	0.75	63.59
		22	0.25	21.19
		23	3.75	319.40
		24	0.50	42.39
		25	1.75	148.39
		26	2.75	233.17
		27	5.75	484.66
	2012	02	2.00	169.86
		03	0.25	20.52
		10	0.75	63.80
			23.25	\$1,969.72
HAILE, LINDA MARIA ACCOUNTANT	2011	23	0.25	15.75
			0.25	\$15.75

## Regional Payroll Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
HILL, LOLITA A.	2011	16	2.50	174.76
ENVIRONMENTAL ENGINEER		17	1.00	69.75
		23	5.50	384.48
		24	22.00	1,537.90
		25	1.25	87.39
		26	0.25	17.36
	2012	10	1.75	121.73
			34.25	\$2,393.37
JONES, TERESA	2011	13	0.25	15.44
ENV.PROTECTION SPECIALIST			0.25	\$15.44
NELSON, THOMAS LEVERETT	2011	16	0.25	23.68
SUPERVISORY GENERAL ATTORNEY	2012	01	0.25	22.36
		03	0.25	22.59
		06	0.25	22.59
		07	0.50	47.42
		08	0.50	47.49
		09	0.25	23.77
		10	0.75	71.25
			3.00	\$281.15
PODOWSKI, ANDREW A.	2012	01	0.25	18.57
TOXICOLOGIST			0.25	\$18.57
SHORT, THOMAS R.	2011	25	1.00	91.41
ENVIRONMENTAL ENGINEER			1.00	\$91.41
Total Regional Payroll Costs			118.25	\$7,561.83

## Headquarters Payroll Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
MOTTO, BRIAN Attorney-Adviser	2011	15	0.25	15.74
			0.25	\$15.74
RIDENOUR, STEVEN Environmental Protection Specialist	2011	19	2.50	119.62
			2.50	\$119.62
Total Headquarters Payroll Costs			2.75	\$135.36

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT

Contractor Name: TOEROEK ASSOCIATES INC.

EPA Contract Number: EPW10011

Delivery Order Information	<u>DO #</u>	<u>Start Date</u>	<u>End Date</u>
	1	10/01/2011	11/30/2011

Project Officer(s): QUIGLEY, EDWARD

Dates of Service: From: To:

Summary of Service: ENFORCEMENT SUPPORT SERVICES

Total Costs: \$1,218.33

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>	<u>Annual Allocation</u>
19	11/15/2011	21,159.56	AVC110076 12/12/2011	226.40	303.38
20	12/15/2011	24,111.13	AVC120006 01/11/2012	294.25	394.30
Total:				<u>\$520.65</u>	<u>\$697.68</u>



## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT

Contractor Name: TOEROEK ASSOCIATES INC.

EPA Contract Number: EPW10011

Delivery Order Information	<u>DO #</u>	<u>Start Date</u>	<u>End Date</u>
	1	10/01/2011	11/30/2011

Project Officer(s): QUIGLEY, EDWARD

Dates of Service: From: To:

Summary of Service: ENFORCEMENT SUPPORT SERVICES

Total Costs: \$1,218.33

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<u>Voucher Number</u>	<u>Schedule Number</u>	<u>Rate Type</u>	<u>Annual Allocation Rate</u>
19	AVC110076	Provisional	1.340004
20	AVC120006	Provisional	1.340004

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

INTERAGENCY AGREEMENT (IAG)

Federal Agency: DEPARTMENT OF JUSTICE

IAG Number: DOJ/OVERSIG

Project Officer(s): JOE WARREN

Dates of Service: From: To:

Summary of Service:

Total Costs: \$342.38

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
90-11-3-279/6	06/21/2012	0.00	N/A 02/25/2012	342.38
Total:				<u><u>\$342.38</u></u>

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

SUPERFUND COOPERATIVE AGREEMENT (SCA)

State Agency: OHIO EPA

SCA Number: V98568704

Project Officer(s): Glynis Landers

Dates of Service: From: To:

Summary of Service:

Total Costs: \$182.74

<u>Drawdown Number</u>	<u>Drawdown Date</u>	<u>Drawdown Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
311334820CV	06/08/2011	7,588.11	11643997341 06/08/2011	182.74
			Total:	<u>\$182.74</u>

## Contract Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

TECHNICAL SERVICE AND SUPPORT

Contractor Name: ASRC MANAGEMENT SERVICES, INC.

EPA Contract Number: EPW05052

Delivery Order Information	<u>DO #</u>	<u>Start Date</u>	<u>End Date</u>
	66	01/01/2011	08/28/2011

Project Officer(s): CALVIN, LYNN  
RZEZNIK, ANNA

Dates of Service: From: To:

Summary of Service: ADMINISTRATIVE SUPPORT SERVICES

Total Costs: \$235.49

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
55	02/10/2011	116,909.13	R1526 03/15/2011	7.66
59	04/10/2011	116,789.45	R1711 05/06/2011	77.49
62	06/10/2011	125,432.67	R1931 07/07/2011	38.74
64	08/10/2011	100,609.85	RCHC1 09/12/2011	84.66
65	09/10/2011	78,186.81	ACHC11271 09/30/2011	26.94
			Total:	<u>\$235.49</u>

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Fiscal Year</u>	<u>Direct Costs</u>	<u>Indirect Rate( %)</u>	<u>Indirect Costs</u>
2011	6,361.54	49.25%	3,133.05
2012	3,314.59	49.25%	1,632.44
	<u>9,676.13</u>		

Total EPA Indirect Costs

\$4,765.49

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
BARNES, SHEILA	2011	14	120.07	49.25%	59.13
		16	96.05	49.25%	47.30
		17	120.06	49.25%	59.13
		18	144.06	49.25%	70.95
		20	48.03	49.25%	23.65
		22	96.31	49.25%	47.43
		23	288.14	49.25%	141.91
		24	186.20	49.25%	91.70
		26	240.13	49.25%	118.26
		27	335.44	49.25%	165.20
			1,674.49		\$824.66
ESTES, SHERRY L.	2011	17	21.19	49.25%	10.44
		18	63.60	49.25%	31.32
		19	317.96	49.25%	156.60
		20	63.59	49.25%	31.32
		22	21.19	49.25%	10.44
		23	319.40	49.25%	157.30
		24	42.39	49.25%	20.88
		25	148.39	49.25%	73.08
		26	233.17	49.25%	114.84
		27	484.66	49.25%	238.70
			1,715.54		\$844.92
HAILE, LINDA MARIA	2011	23	15.75	49.25%	7.76
			15.75		\$7.76
HILL, LOLITA A.	2011	16	174.76	49.25%	86.07
		17	69.75	49.25%	34.35
		23	384.48	49.25%	189.36
		24	1,537.90	49.25%	757.42
		25	87.39	49.25%	43.04



## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
HILL, LOLITA A.	2011	26	17.36	49.25%	8.55
			2,271.64		\$1,118.79
JONES, TERESA	2011	13	15.44	49.25%	7.60
			15.44		\$7.60
MOTTO, BRIAN	2011	15	15.74	49.25%	7.75
			15.74		\$7.75
NELSON, THOMAS LEVERETT	2011	16	23.68	49.25%	11.66
			23.68		\$11.66
RIDENOUR, STEVEN	2011	19	119.62	49.25%	58.91
			119.62		\$58.91
SHORT, THOMAS R.	2011	25	91.41	49.25%	45.02
			91.41		\$45.02
Total Fiscal Year 2011 Payroll Direct Costs:			5,943.31		\$2,927.07

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
EPW05052	55	03/15/2011	7.66	0.00	49.25%	3.77
	59	05/06/2011	77.49	0.00	49.25%	38.16
	62	07/07/2011	38.74	0.00	49.25%	19.08
	64	09/12/2011	84.66	0.00	49.25%	41.70

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
EPW05052	65	09/30/2011	26.94	0.00	49.25%	13.27
			235.49	0.00		\$115.98
V98568704	311334820CV	06/08/2011	182.74	0.00	49.25%	90.00
			182.74	0.00		\$90.00
Total Fiscal Year 2011 Other Direct Costs:			418.23	0.00		\$205.98
Total Fiscal Year 2011:			6,361.54			\$3,133.05

PAYROLL DIRECT COSTS

Employee Name	Fiscal Year	Pay Period	Payroll Costs	Ind. Rate (%)	Indirect Costs
BARNES, SHEILA	2012	01	433.43	49.25%	213.46
		02	144.06	49.25%	70.95
		03	147.68	49.25%	72.73
			725.17		\$357.14
DABABNEH, FOUAD N.	2012	01	313.89	49.25%	154.59
		03	62.87	49.25%	30.96
			376.76		\$185.55
ESTES, SHERRY L.	2012	02	169.86	49.25%	83.66
		03	20.52	49.25%	10.11
		10	63.80	49.25%	31.42
			254.18		\$125.19

## EPA Indirect Costs

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5  
 Costs from MARCH 1, 2011 THROUGH FEBRUARY 29, 2012

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
HILL, LOLITA A.	2012	10	121.73	49.25%	59.95
			121.73		\$59.95
NELSON, THOMAS LEVERETT	2012	01	22.36	49.25%	11.01
		03	22.59	49.25%	11.13
		06	22.59	49.25%	11.13
		07	47.42	49.25%	23.35
		08	47.49	49.25%	23.39
		09	23.77	49.25%	11.71
		10	71.25	49.25%	35.09
			257.47		\$126.81
PODOWSKI, ANDREW A.	2012	01	18.57	49.25%	9.15
			18.57		\$9.15
Total Fiscal Year 2012 Payroll Direct Costs:			1,753.88		\$863.79

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
DOJ/OVERSIG	90-11-3-279/6	02/25/2012	342.38	0.00	49.25%	168.62
			342.38	0.00		\$168.62
EPW10011	19	12/12/2011	226.40	303.38	49.25%	260.92

UNITED SCRAP LEAD, TROY, OH SITE ID = 05 H5

### OTHER DIRECT COSTS

Contract, IAG, SCA, Misc.NO	Voucher Number	Treasury Schedule Date	Site Amount	Annual/SMO Allocation Costs	Ind. Rate (%)	Indirect Costs
EPW10011	20	01/11/2012	294.25	394.30	49.25%	339.11
			520.65	697.68		\$600.03
Total Fiscal Year 2012 Other Direct Costs:			863.03	697.68		\$768.65
Total Fiscal Year 2012:			3,314.59			\$1,632.44
Total EPA Indirect Costs						\$4,765.49



BEFORE THE DIRECTOR, SUPERFUND DIVISION,  
REGION 5, U.S. EPA

\_\_\_\_\_  
SETTLING GENERATOR DEFENDANTS )

Complainant, )

v. )

REGION 5, U.S. EPA, )

Respondent )  
\_\_\_\_\_ )

Case No. C-3-91-309

DECLARATION OF SHERRY L. ESTES

I, Sherry L. Estes, in accordance with 28 U.S.C. § 1746, declare as follows:

1. I received a J.D. from the University of Michigan in 1982.
2. In 1990, I began working for EPA. I had hardly been working for EPA for three months when I was assigned to work on the United Scrap Lead Site (Site). I have been the staff enforcement counsel for the Site since that time, handling all of the legal aspects related to Site remedial action and cost recovery, with the exception of approximately three months that I took for maternity leave in 1996.
3. In addition to my work on the Site, I have also worked very closely with the Superfund Division on a number of other sites. For a number of years, I have been a member of an experienced staff-level national workgroup that provides advice to EPA HQ and Regional management and staff attorneys about issues that develop in Superfund practice, particularly in response to new developments in caselaw. One of our recent concerns has been broad discovery orders, especially e-discovery, and litigation holds.
4. Because I have worked on the Site for most of the twenty-three years that I have been employed by EPA and because of my extensive experience with Region 5's Superfund program, I am very familiar with the job duties of most of the individuals who might charge response costs to the Site.

Exhibit B



### Review of an Oversight Bill

5. After Sheila Barnes reconciles a draft oversight bill, she sends it to me over EPA's email system. I print it out, and review the EPA time charges first. For instance, most of my own time charges relate to the cost recovery litigation. During each payroll period, when I write down a Site charge on my calendar, I write down whether it was in relation to the litigation, or whether it was in relation to the oversight of the Consent Decree. When it is time for me to enter my time in the PeoplePlus system, I use my calendar entries, plus a review of my sent and received email messages during the time period in question to determine my Superfund time charging. For the Site, I charge my time to two different action codes: "LT" for cost recovery litigation activities, and "PS," which is a general legal review and analysis code, which I use for my oversight activities. When I review the draft Site bill, I instruct Ms. Barnes to remove all of my charges from the draft billing that are associated with the "LT" activity code.
6. I also instruct Ms. Barnes to remove the names of other employees, when I know that particular employee was involved in working on the cost recovery litigation. For instance, certain civil investigators and accountants work almost exclusively with me on the cost recovery litigation, so I automatically remove their time. On the other hand, the Remedial Project Manager or individuals in her supervisory chain are working on Site-related matters, so I leave their charges in the oversight billing.
7. When I am not sure what work a particular individual did at the Site, especially if the type of work that they do in some instances is chargeable under the Consent Decree, and in other instances would be related to litigation, I will call or email the EPA employee, and ask what they did when charging work to the Site. However, I usually make this inquiry when the employee has charged greater amounts of time to the Site.
8. If the employee has only charged a lesser time interval, I have to adopt a sort of cost/benefit analysis towards the strict accuracy of the bill. The smallest time increment that we can charge to a site is a 15-minute time increment. Unless I need to make this inquiry of more than one person, I would need to charge 15 minutes to the Site to ask someone what they had done at the Site, and they would need to charge 15 minutes to answer me. Because my experience is that I often do not receive a response to the first inquiry, if a person charged only 15 minutes to ½ hour, I would probably make a reasonable assumption whether the person's work was more likely to be litigation-related or related to the Consent Decree. This type of cost/benefit analysis is particularly important where, as here, despite asking for and receiving ever greater detail regarding Site charges, the Settling Generator Defendants at the Site have paid \$0 of the last three oversight bills.
9. In reviewing the draft oversight bill, I also examine the travel expenses of EPA employees. Again, when I notice the travel charges of EPA employees who have worked with me on the cost recovery litigation, I remove those charges from the draft oversight bill. Those who work on Site-related matters like the RPM Lolita Hill, if she has travel charged to the Site, I would keep those charges on the draft bill.

10. I also examine contractor charges which are set forth in the draft bill which I am asked to review by Ms. Barnes. One of the contractors that typically has charged costs to the Site is the contractor that manages the Superfund Records Center. Different contractors have held the contract during different time periods, but for the billing periods in question for this formal dispute resolution, the contractor has been ASRC Management Services, Inc. (ASRC).
11. Because I am aware that some of the work which ASRC does would be chargeable under the Consent Decree, and other work would not be, I examine its vouchers closely. I look at the vouchers charged under the draft bill, and typically pick those which are around \$100, or pick those which represent a large percentage of the total costs which ASRC has charged to EPA under the draft bill. Again, I have to adopt a sort of cost/ benefit analysis because ASRC is of course entitled to charge EPA under its contract for the time involved in answering queries regarding details about past vouchers.
12. I then send an email message to the EPA Project Officer, who in this instance is Lorraine Kos. Ms. Kos in turn instructs ASRC to provide documentation regarding the activities which its employees have completed in reference to the Site. This email exchange typically involves a couple of rounds, as I not only need to find out the date and nature of the service which ASRC provided, but also at whose request. If I find out that ASRC was retrieving documents at my request, or at the request of one of the administrative staff who works at my direction, because I am aware of the dates when the cost recovery litigation was active (and, conversely, when I was actively involved in Site-related activities, such as a five-year review), I can determine whether ASRC's charges should appropriately be charged to the oversight bill.
13. I provide the same sort of review for the other contracts. When I contacted Earlene Rhodes, the project officer for the General Accounting Office IAG, where the GAO had in turn contracted with Booz Allen Hamilton for the GEOS Project, I think that I was distracted more by understanding the underlying IAG/contractual nature of the charges, by GAO's contractor Booz Allen Hamilton (BAH). I must admit that I had an underlying nagging concern about these charges, since Ms. Rhodes' initial explanation was that they were used to track groundwater monitoring, and this of course was not on-going at the Site. I should have followed up on my initial disquiet and did not, and Mr. Cyphert was right to question these charges.
14. Since I provided the original misleading information in my October 1, 2002 letter, which Mr. Cyphert included as Exhibit 1 to his Statement of Position, I have investigated the BAH charges further. I have included the BAH Statement of Work as Attachment \_\_\_ to this Declaration. Although the geographic information system is called GEOS, the Groundwater Evaluation and Optimization System, it can be used for any type of geophysical parameter, including soil and air contaminant data as noted on page C-2 of Attachment \_\_\_. The GEOS system can tie the contaminant data to a location on a site, and use that data to generate maps supporting site-wide and program-wide decisions. BAH imported data files into its EQUIS databases where the data can be accessed by

EPA RPMs and GEOs for analysis. This system was specifically intended to be used to support five-year reviews. Since Region 5 knew that a five-year review was scheduled at the Site in September 2011, available Site data was to be loaded into the GEOs system in advance in support of the five-year review. Thus, despite the unfortunate misleading information that I provided to Mr. Cyphert initially, with this new supporting information, I have shown that this is a legitimate oversight charge under the Consent Decree.

15. I specifically incorporate into this Declaration the information set forth in my letter of October 1, 2012 to Michael Cyphert, which is set forth as Exhibit 1 to his Statement of Position.
16. As mentioned previously, because for some employees, their work could either be chargeable under the Consent Decree, or litigation-related, I would probably make a reasonable assumption about which type of charge was more likely, particularly when the amount of time charged was a lesser interval, such as 15 minutes or one half hour, because it also requires chargeable time for me to investigate a charge. In reviewing the FY 2010 charge of Linda Haile for ½ hour, because Ms. Haile is the team leader for the oversight billing team in the Program Accounting and Analysis Section, I determined that it was more likely than not that her charge would be chargeable under the Consent Decree.
17. The minimum time interval that EPA employees can bill in the PeoplePlus system is 15 minutes. If I had contacted Ms. Haile regarding this one-half hour charge, I would have had to bill 15 minutes; similarly, Ms. Haile also would have billed 15 minutes. So, we would have to charge one half hour to investigate a one-half hour charge. Even though federal employees did not receive an increase in the general payment schedule from FY 2010 to FY 2011, it is likely that one or both of us received a step increase, which means that it would have been more expensive in 2011 to investigate the charge in 2011 than to leave it on the billing in the first place.
18. However, I did investigate all of the charges on the August 3, 2011 and September 27, 2011 billings at Mr. Cyphert's request, and found out that Ms. Haile's FY 2010 charge was actually for litigation support. Her Declaration states that her FY 2011 charge, though, was for oversight. Accordingly, I have offered to remove the FY 2010 charge from the bill.
19. I am also willing to remove the following EPA employee time charges (and associated indirect charges) from the August 3, 2011 oversight billing: (1) the FY 2009 charge of Deborah Garber, Supervising General Attorney for 1.00 hour; (2) the FY 2010 charge of T. Leverett Nelson, Supervising General Attorney for .25 hour; (3) the FY 2009 charge of Andrew Podowski, Toxicologist.
20. I am additionally willing to remove the following EPA employee time charges (and associated indirect charges) from the September 27, 2011 billing: (1) the FY 2011 1.50 and 1.75 hour time charges, for a total of 3.25 hours of Deborah Garber, Supervising

General Attorney; and the (2) FY 2010 1.0 hour charge of Andrew Podowski, Toxicologist.

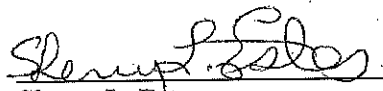
21. Leverett Nelson is a Branch Chief in the Office of Regional Counsel. He is more likely to be tracking whether a lodged cost recovery consent decree has been entered than to be involved with the oversight of the RD/RA Consent Decree. When I queried him about his time, he indicated that it was involved with litigation-related activities. For this reason, I will ask that Ms. Barnes remove his charge from the August 3, 2011 billing.
22. Ms. Garber was my supervisor for 20 years, and during FY 2009 to FY 2011. However, she has now retired from EPA, so re-creating whether her time was related to litigation-related activities or chargeable under the Consent Decree is more difficult. Although she and I spent more time on litigation-related activities, she also did conduct case reviews with me, at which time we would discuss the status of the Site institutional controls, or issues related to the Site receiver or long-term stewardship of the Site. Thus, it would be difficult to categorize her time as being all one thing or the other. Since I cannot document the nature of her time charging and it does remain ambiguous, I will agree to remove her time from the billings.
23. I will also remove the FY 2010-2012 time of Andrew Podowski, Toxicologist, who charged one hour each to each of the three billings. When I asked him about his activities at the Site, he could not remember what he had accomplished at the Site, so it is not appropriate for these charges to remain on the billing.
24. Additionally, I am willing to remove the charges of Toeroek Associates, Inc. from the June 27, 2012 billing. The services provided under this contract had to do with obtaining an estimate for the cost of the title commitment. I needed to know the estimated title commitment cost, since Region 5 had determined to fund the cost of the title commitment from the United Scrap Lead special account, and I had to know how much money to ask the Cincinnati Finance office to obligate for our use here in the Region. Although it is EPA's position that the Consent Decree would make this amount chargeable to the Settling Generator Defendants, the Department of Justice has represented to the Group that we will not charge the extramural costs of the title commitment, so I will agree to remove this amount, as well as any associated EPA indirect costs, from the June 27, 2012 billing.
25. With regard to the June 27, 2012 billing, I would like to provide more detail with regard to my own time charges, as follows: In FY 2011, during pay period 19 in which I charged 3.75 non-litigation hours to the Site, I worked to provide my first comments on the draft five-year review.
26. For pay period 23, when I charged 3.75 hours to the Site, we were trying to tie up certain loose ends, and respond to comments raised by EPA Headquarters about the draft review.
27. During pay period FY 2011 26, during which I charged 2.75 hours to the Site, I was involved in the dispute resolution of one of the earlier oversight bills under the Consent

Decree, and I was working with my accountant to make sure that DOJ costs related to oversight activities were properly charged under an oversight bill to be issued, and make sure that no litigation costs were included in that bill.

28. For pay period 27, I worked on Pay period 27 continued pretty much the same tasks as the prior pay period: I worked with my accountant on DOJ costs; I was involved in dispute resolution under the Consent Decree, including a 1 ½ hour discussion with you on September 20, 2012, and I worked at the end of the fiscal year to finalize the Site five-year review.
29. During FY 2012, pay periods 2 and 3, during which I charged a total of 2.25 hours, I worked on oversight billings, the dispute resolution of prior billings, and institutional controls, particularly trying to ascertain how I could utilize a particular contract vehicle that Region 5 already has in place at the Site in order to obtain a title commitment.
30. During FY 2012, pay period 10, I charged ¾ of an hour to the Site. I worked on the contract vehicle related to the title commitment.
31. In the June 27, 2012 billing, a total of \$235.49 was charged to the Site under the Technical Service and Support Contract, EPW05052. This is the contract with ASRC for the management of the Superfund Records Center. Contrary to my usual practice, before this billing was sent to the Settling Generator Defendants, I did not seek an explanation for the activities associated with the Vouchers in which the higher charges appear. Since the information which I subsequently received during the informal dispute resolution of this matter indicates that all of the work was done pursuant to my request or that of the paralegal in my section, and given the date of the requests, it is obvious to me that she and I were obtaining Site documents in support of what was some upcoming cost recovery litigation in connection with the Site. Since the only Vouchers for which I do not have information, Vouchers # 55 and 65, together accounted for less than \$35 in costs, I will agree to remove ASRC charges (and associated EPA indirect charges) from the June 27, 2012 oversight billing.

I, Sherry L. Estes, Associate Regional Counsel; Office of Regional Counsel; Region 5; U.S. Environmental Protection Agency; declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 29<sup>th</sup> day of July, 2013, in Chicago, Illinois.

  
Sherry L. Estes

BEFORE THE DIRECTOR, SUPERFUND DIVISION,  
REGION 5, U.S. EPA

SETTLING GENERATOR DEFENDANTS )

Complainant, )

v. )

Case No. C-3-91-309

REGION 5, U.S. EPA, )

Respondent )

DECLARATION OF SHEILA BARNES

I, Sheila Barnes, in accordance with 28 U.S.C. § 1746, declare as follows:

1. I began working for EPA on September 2, 1984. My first job was with the Human Resources Division, as a personnel clerk. I held this position until January 12, 1991.
2. On January 13, 1991, I began working for the Finance Management Office, Finance And Accounting Section, Payment Team, as a voucher examiner. I examined vouchers for construction grants and travel vouchers. I made sure that there was enough money available for payments, so that a grant recipient could voucher against the grant. I also made sure that travel vouchers were documented with appropriate receipts.
3. On November 17, 1991 through November 10, 1992, I was detailed to the Finance and Accounting Section, Accounting Team, as an Accounting Technician. I verified account documentation, as well as work with the imprest clerk as an alternate imprest clerk, distributing reimbursements of monies due to employees. I also worked on paying travel vouchers. My job duties included going to the U.S. Federal Reserve Bank to receive checks, and to replenish the Region's cash flow.
4. On February 21, 1993, I was re-assigned to the Accounting Team as an Accounting Technician.

Exhibit E

5. On November 13, 1994, I was promoted to a Financial Assistant in the Comptroller Branch, Superfund Accounting Section. In this position, I worked on scanning documents into the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS), and preparing cost recovery documents for upcoming court dates.
6. In 2001, I obtained my Associate's Degree from Harold Washington College. On November 4, 2001, I was promoted to a Financial Specialist in the Program Accounting and Analysis Section. I still was involved with Superfund Accounting cost recovery duties.
7. During this same time period, I also started working with the accounts receivable side of the section, which included preparing bills for the sites in the State of Ohio. Currently, I work only for the oversight billing team, and I am responsible for oversight billing and tracking receivables in Ohio.
8. I work with Sherry Estes, an attorney in the Office of Regional Counsel and Lolita Hill, the Remedial Project Manager (RPM) in generating oversight billings for the United Scrap Lead Site (Site). When it is first necessary for me to generate a billing, I ask my colleague, Darius Taylor, to "build" the Site draft billing cost recovery package. I do this by telling him the name of the site, the site spill identifier, and the billing period. I need him to build the draft bill, because not all of the accountant analysts have administrative rights to work in the SCORPIOS program.
9. At the same time, while Taylor is building the draft billing, I prepare a draft cover letter for the billing, and request DOJ oversight costs from our DOJ liaison, since EPA also bills PRP groups for these costs.
10. Taylor downloads the information from the EPA accounting software into the SCORPIOS program and produces a draft cost summary report that shows only data for costs that have actually been paid. From SCORPIOS, he then generates the draft itemized cost summary that summarizes all of the costs paid at a particular site.
11. I also must enter information into our bill tracking system, which keep track of when we need to issue a draft bill for review, and when a final billing should be issued to a PRP group. We also use this system, once a final bill has been issued, to track receipts of the payments.
12. I then take the draft bill which Mr. Taylor gives me, and from here, I must then reconcile the report. This consists of checking the summary report of employee time and hours against the individual employee time in the PeoplePlus system, and the amounts listed for employee travel against the approved vouchers in the GovTrip system. Next, in order to reconcile Superfund cooperative agreements, I check with the RPM or the Project Officer to make sure that the cooperative agreements were paid and that the amounts match the amount generated in my draft cost report.

13. I also must reconcile the contracts which appear on the draft billing. I check to see whether the charges set forth in the draft cost summary report match up with the treasury schedules. If they do not, I must rationalize the cost with Betty Hamilton of Research Triangle Park. Additionally, the draft report might already contain certain amounts for DOJ costs. I have been instructed that if certain DOJ codes appear in the draft report, these DOJ costs are to be removed from the report. Finally, I check the report to see if there appear to be any costs that do not appear to belong to the site under review.
14. Once the report is reconciled, if I am working with the United Scrap Lead Site, I send the draft billing to Sherry Estes and Lolita Hill. It is always part of our billing system that the draft oversight bill must be reviewed by the site attorney and site RPM before it can be sent out to the PRP group.
15. Because there is on-going cost recovery at the Site, Ms. Estes edits the draft bill extensively. She typically crosses out a large number of employee time and travel costs, as well as some contractor costs by hand on the draft bill, scans in her handwritten changes, and sends them to me via email.
16. Once I receive Ms. Estes' changes, I remove the costs that she has indicated need to be removed from the bill. In addition to the direct costs that Ms. Estes will have marked on the draft billing, I will also have to remove the indirect EPA costs that are associated with the direct EPA costs that are removed. At that point, I generate a revised draft billing which I send back to Ms. Estes for review.
17. Ms. Estes will then look at the revised billing. Typically, she will make a few revisions on the revised draft billing, but they will be minor, compared to her first round of edits.
18. If she does have edits on the revised billing, she sends them the same way that she sent the first round of edits, with scanned changes via email. Once again, I will remove any direct (and associated indirect) charges that she has questioned, and generate a third revised draft for Ms. Estes' review.
19. At that point, the billing is usually ready to be sent. Our billing section has a form which must be signed both by the attorney and the RPM that they agree with the billing before the oversight bill may be sent. Thus, once Ms. Estes sends me her signed approval, and I also receive the signed approval from Ms. Hill, I send out the approved billing.
20. Since there has been dispute resolution in connection with the oversight bills sent in connection with this Site, I have also worked with Ms. Estes in an attempt to resolve the dispute resolution.
21. For the billing period March 1, 2011 through February 29, 2012, which was billed on June 27, 2012, I was involved in the following activities with reference to the Site. In FY 2011, during pay period 14, I charged two and ½ hours, and was working on the FY



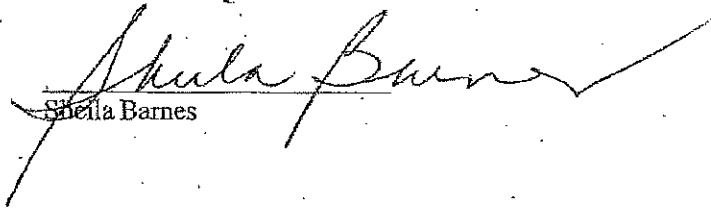
2010 oversight bill. This work included having Mr. Taylor build the site, and defining the billing period. I also generated a request to our DOJ counterpart for any DOJ oversight costs. I also entered my information into my section's billing tracking system for this billing.

22. During FY 2011, pay period 16, I charged two hours. This time was spent talking with my team leader regarding the need for verification on DOJ costs, based on my discussion with the Site attorney.
23. For pay period 17, when I charged two hours to the Site, I had received a response from the Site attorney, which told me that I was supposed to take the DOJ costs out of the bill.
24. During pay period 18, I spent three hours preparing a corrected bill without DOJ costs. For pay period 20, I spent an additional hour, to prepare another corrected billing, to take out the "LT" or litigation codes from the FY 2010 billing.
25. During pay period 22, I spent two hours getting the final FY 2010 bill ready and sending it out.
26. For pay period 23, I charged six hours, and was working on the FY 2011 oversight bill. This work included having Mr. Taylor build the site, defining the billing period, and generating a request to DOJ for its oversight costs. I entered information into our billing tracking system.
27. During pay period 24, I spent four hours reconciling costs, preparing the cover letter for the billing, and preparing the itemized cost summary. I pulled the approval form to be sent to the attorney and the RPM for their review of the draft billing.
28. I charged five hours to the Site during pay period 26. I had received the oversight costs from DOJ, but I had great difficulty entering these costs into the SCORPIOS system.
29. During pay period 27, I had to take out the DOJ costs, because I was told by Ms. Estes that the costs that I had received from DOJ were not actually oversight costs. We did obtain corrected costs that we then put in the bill. I prepared to send out the final bill, along with the itemized cost summary. All of these tasks took a total of seven hours for the pay period.

30. Pay period 27 of FY 2011 and pay period 1 in FY 2012 are part of the same two-week period. During pay period 1, I continued the same tasks of finalizing the oversight bill that I had begun the week before, as set forth in the prior paragraph. I charged nine hours to the Site during this pay period. I completed the bill during this pay period.
31. During the second and third pay periods 2012, I charged three hours each pay period to the Site. This included entering data into the bill tracking system, and preparing all the documents received in order to place them in the file. Additionally, I received an email from Attorney Estes regarding an invocation of dispute resolution over the Site oversight bill and she needed my help.

I, Sheila Barnes, Financial Specialist; Program Accounting and Analysis Section;  
Comptroller Branch; Resource Management Division; Region 5; U.S. Environmental Protection  
Agency; declare under penalty of perjury, under the laws of the United States, that the foregoing  
is true and correct to the best of my knowledge and belief.

Executed on this 30 day of July, 2013, in Chicago, Illinois.

  
Sheila Barnes

BEFORE THE DIRECTOR, SUPERFUND DIVISION,  
REGION 5, U.S. EPA

SETTLING GENERATOR DEFENDANTS

Complainant,

v.

REGION 5, U.S. EPA,

Respondent

Case No. C-3-91-309

DECLARATION OF LOLITA HILL

I, Lolita Hill, in accordance with 28 U.S.C. ' 1746, declare as follows:

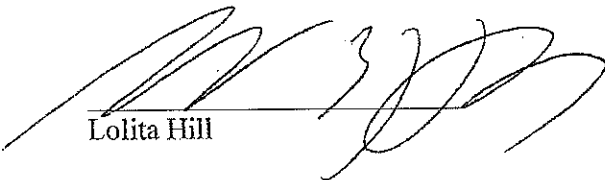
1. I have a B.S. in Chemical Engineering from Louisiana Technical University which was awarded in 1986.
2. From 1987-1997, I worked for Region 5's Air and Radiation Division, Air Enforcement Branch, as an Environmental Engineer. I helped identify violations of the Clean Air Act and its implementing regulations and provide technical assistance to Region 5's Office of Regional Counsel. I would be assigned to work with a staff attorney, and, together as the enforcement team, in consultation with Region 5 management, we would try to gain injunctive relief to bring violators back into compliance and collect penalties consistent with EPA penalty policies.
3. In 1997, I moved over to the Superfund Division. I worked for approximately six months as an Environmental Engineer in the Office of Chemical Preparedness and Prevention. This office addresses the issues of chemical accident reporting under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning & Community Right-To-Know Act (EPCRA). The office is also involved in chemical accident investigations.
4. Later on in 1997, I moved to the Remedial Response Branch of the Superfund Division, where I became a Remedial Project Manager. My job as a Remedial Project Manager (RPM) is to assess, manage, and address risks at NPL sites:



5. I first became assigned as the RPM to the United Scrap Lead site (Site) in January 2000, and I have been assigned to the Site since that time. At the time I became assigned to the Site, remedial construction had been completed at the Site.
6. In the oversight billing dated September 27, 2011, I charged 4 hours of Future Response Costs to the Site in pay period 3 of fiscal year 2011. I commenced drafting the five-year review and worked on the institutional controls tracking work sheet for the Site.
7. In the oversight billing dated June 27, 2012, I charged a total of 34.25 hours of Future Response Costs to the Site in fiscal years 2011 and 2012. These charges were related to the performance of the five-year review for the Site. Specifically, I reviewed Site remedial action files, reviewed the five-year review guidance, wrote the draft report, reviewed the Site inspection report, organized and copied Site inspection photos, consulted with the State on the five-year review and responded to State comments, discussed with Superfund management the inspection findings and the need for institutional controls at the Site, responded to EPA headquarters, ORC, and Superfund management comments regarding the five-year review, the protectiveness of the Site, and Site security, and finalized the five-year review report
8. Ohio EPA conducted the Site inspection in support of the five-year review in July 2010. Ohio EPA drafted the Site inspection report and submitted the report to EPA on July 26, 2010. In 2009, Ohio EPA performed file management and updated the Site files.
9. When the accountant generates a draft oversight bill, before the bill is sent out, I am asked to review the bill and make sure that all of the charges on the bill are appropriate. The bill cannot be sent out until I sign a statement that I agree with the billing charges.

I, Lolita Hill, RPM; Superfund Division; Region 5; U.S. Environmental Protection Agency; declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 29<sup>TH</sup> day of July, 2013, in Chicago, Illinois.

  
Lolita Hill



BEFORE THE DIRECTOR, SUPERFUND DIVISION,  
REGION 5, U.S. EPA

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SETTLING GENERATOR DEFENDANTS )

Complainant, )

v. )

REGION 5, U.S. EPA, )

Respondent )

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Case No. C-3-91-309

DECLARATION OF RICHARD J. GRAY

I, Richard J. Gray, in accordance with 28 U.S.C. ' 1746, declare as follows:

1. I have a B.S. from Mt. Olive College in North Carolina which was awarded in 1999.
2. In 2001, I was awarded Masters Degrees in both Business and Management from Webster University in St. Louis, Missouri.
3. I began working for EPA in 2001. From 2001-2003, I was the Team Leader for the Payroll and Accounting Team, as part of the Payroll Office, Washington Finance Center, Office of Financial Services, Office of the Chief Financial Officer, in EPA HQ.
4. From 2003-2004, I was the Chief, Payroll Office. I supervised and coordinated the activities of the staff of the Payroll Office, part of the Washington Finance Center, Office of Financial Services, Office of the Chief Financial Officer, in EPA HQ. In this capacity, I also certified financial documentation for the Agency's financial accountability.
5. From November 2004 to July 2005, I was the Associate Staff Chief/Lead Program

Analyst for EPA's Office of Research and Development. My duties were essentially those of a Property Manager for ORD's properties throughout Washington, D.C. area, and in regional and in satellite locations such as Ada, Oklahoma. I oversaw contracts and funding for building renovations and safety upgrades to meet current standards for safety.

6. From 2009 to the present, I have been the Director of the Payroll Management and Outreach Staff. In this capacity, I am the Payroll Director for EPA. I provide Agency-wide payroll liaison in matters pertaining to time and labor reports and payroll accounting. Additionally, I respond to inquiries from Congressional staff regarding payroll payment processes and on the status of specific payment actions.
7. As part of my job duties, I am familiar with EPA's time accounting system, PeoplePlus, and EPA's Integrated Financial Management System (IFMS), EPA's accounting software for the majority of the time for the oversight bills at issue in this formal dispute resolution and the internal controls and quality control checks which are used to maintain their integrity. The EPA accounting system known as Compass replaced the IFMS system in FY 2012 in October 2011, and I am familiar with the Compass system.
8. EPA utilizes PeoplePlus to record time and attendance which is integrated into the payroll system of Defense Finance and Accounting Service (DFAS), which process all payroll information for EPA. Each EPA employee enters his or her time and attendance, as well as site-specific charging for Superfund and oil spill sites based upon a site-specific site spill identification number after each bi-weekly payroll cycle. Employees electronically certify the accuracy of their time sheets by attesting and submitting the timesheets.
9. Once the employee has attested and submitted his or her information, the timekeeper for



each section has authority to review and modify employee timesheets, based upon his or her knowledge of employee attendance. Each employee timesheet must be verified and submitted by the employee's supervisor electronically each bi-weekly pay period before the employee can be paid. The supervisor not only has knowledge of the employee's time and attendance, but also of the work that the employee is doing, and so has the duty and the authority to correct any incorrect site-specific time charging of which he or she is aware.

10. At the end of the pay period, after all EPA employees have entered their information into the PeoplePlus system, the payroll is run on a Agency-wide basis (feeding into the DFAS system) so that EPA employees may be paid. The PeoplePlus system also tracks annual and sick leave, compensatory leave, leave without pay, and any other type of leave recognized by the system. Other systems such as Compass and the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) are then updated with the new and/or corrected payroll transactions.
11. SCORPIOS is a multi-user data management system that EPA developed to organize cost information and produce reports that summarize costs on a site-specific basis. SCORPIOS organizes site-specific costs into categories such as EPA payroll, travel, and contractual costs associated with response actions. In order to prepare oversight bills, this cost information is extracted from IFMS or Compass, EPA's accounting software, depending upon the time period in question.
12. Before EPA began using PeoplePlus for its time distribution and payroll system in fiscal year 2005, or on October 1, 2004, it provided training to all EPA employees on the new system. Employees new to EPA are also trained on the system, using the training manual

set forth in Attachment A. The training provided prior to the beginning of fiscal year 2005 was very similar to the training which is currently provided to new employees.

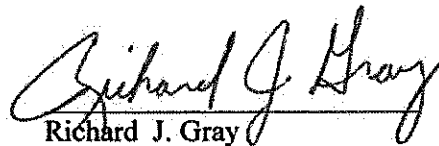
13. EPA developed certain guidance which sets forth the standard internal operating controls which the Agency uses to maintain the integrity of its IFMS system and weed out internal errors, as part of its payroll processing system. One of these guidance documents is called W/P Reference, "PMOS.19.A," which is dated March 17, 2011, and was prepared by Amber Eckenrod. This guidance, Attachment B to this Declaration at p. 5, explains that each pay period the Accounting and Reporting Section (ARS) identifies payroll rejections on the IFMS, currently Compass Reject Report, and corrects the errors found.
11. As discussed in PMOS.19.A, the ARS accountant updates an Excel spreadsheet which lists all of the payroll rejections. The total rejected amount on this spreadsheet must agree with the total from the Websphere Business Interchange (WBI) reconciliation email and the IFMS, currently the Compass Reject Report.
12. These reports are used to identify a charging site reported in PeoplePlus which does not exist, or a fixed account number which does not exist. Sometimes an expired code or an incorrect organization code is also identified, or the employee uses the wrong action code with a certain program results code. All of these checks are important for maintaining accounting and billing integrity. Once the correct information is received, the ARS Accountant reprocesses the transaction to update IFMS/Compass.
13. The error report is segregated by Region, and a report is sent to each Regional Finance Office. Afterwards, staff involved with Superfund accounting contact each individual employee to have him or her correct his/her timecard, so that the corrected information

will be fed back into the PeoplePlus system. However, in correcting accounting string errors, the employee and supervisor still have the final responsibility to make sure that the timecard is correct and accurately reflect the actual work that the employee has performed.

14. The guidance that I have provided specifically discusses IFMS, but very similar checks are run on EPA's current accounting system Compass.

I, Richard J. Gray, Director of the Payroll Management and Outreach Staff, Office of Financial Services, Office of the Chief Financial Officer, U.S. Environmental Protection Agency; Washington, D.C.; declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 29 day of July, 2013, in Washington, D.C.

  
Richard J. Gray